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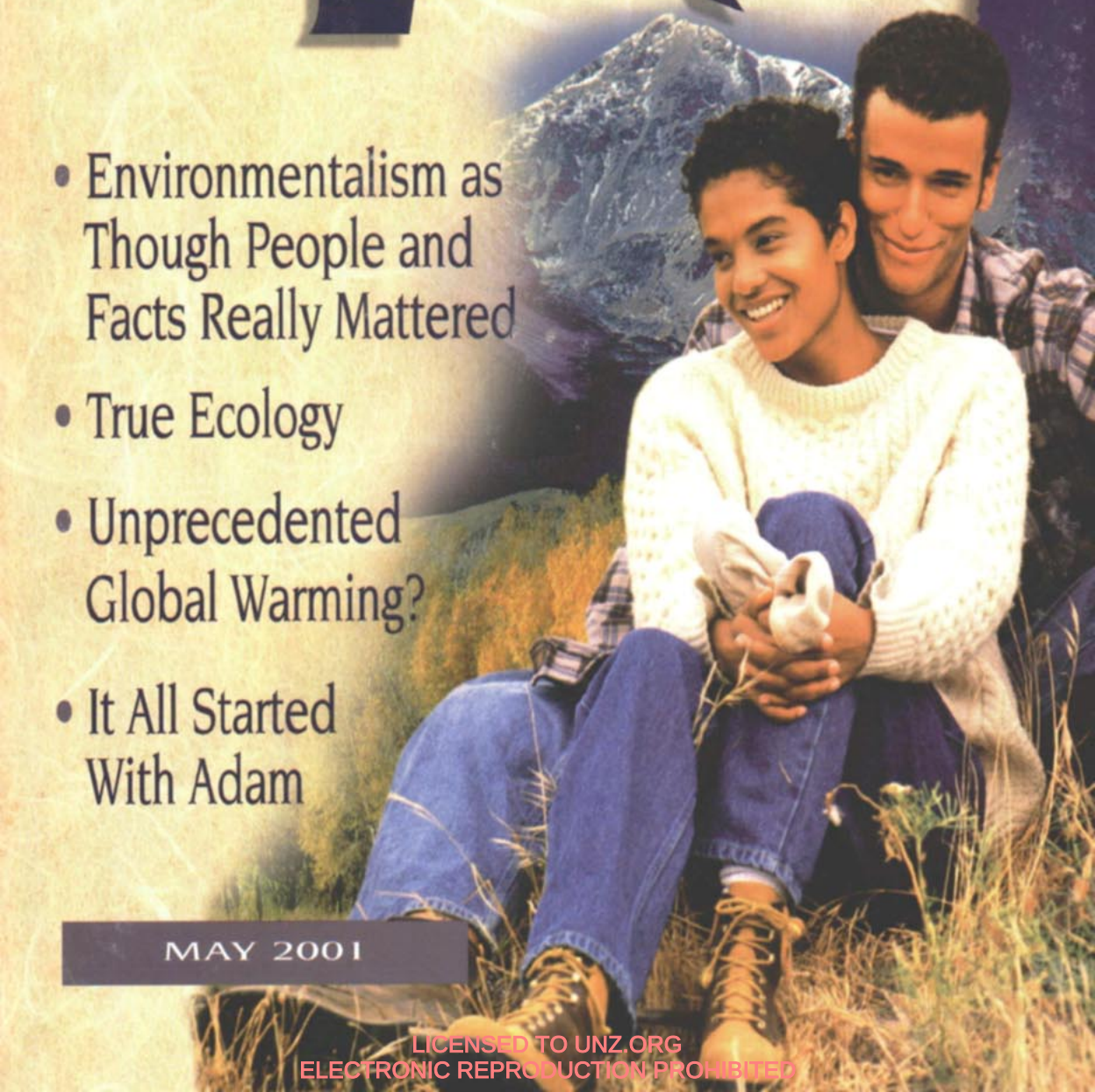

- Environmentalism as Though People and Facts Really Mattered
- True Ecology
- Unprecedented Global Warming?
- It All Started With Adam

MAY 2001

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Annual Spring Dinner

Sunday, May 20, 2001

Featuring

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best-selling author
and host of
Fox News Channel's
"The O'Reilly Factor"

Harvard Club, New York, NY

Reception 6:00 P.M./Dinner 7:00 P.M.

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PERSPECTIVE

To Each According to His Need—As He Sees It

As talk of an across-the-board cut in income tax rates fills the air, critics are apt to say that those who "need it most" will get little relief. The critics believe that wealthy people already have enough money and thus need no more. But low-income people *do* need more, so any tax-cut plan should primarily help them.

Those critics are little bothered that the bottom 50 percent of income earners pays a scant 4 percent of the tax. Far from paying income taxes, many low-income people receive cash through the misnamed Earned Income Tax Credit. Meanwhile, the despised top 1 percent pays a third of the tax. The top 5 percent pays over half!

But these days it is considered cruel to insist that tax cuts should primarily relieve those who actually pay taxes.

Harvard economist Richard Freeman and Eileen Appelbaum of the Economic Policy Institute are among those who consider it cruel. In a recent *New York Times* op-ed they proposed that instead of a tax-rate cut, the government should stimulate the economy and reward people for the budget surplus by paying out a one-time $500 "dividend" to every permanent resident—adult and child. The reason for the equal amount is that "Our current surplus is America's return on 10 years of good economic performance, to which all of us have contributed." Well, some have contributed more than others. And as we saw above, some have definitely contributed more to the surplus than others. But we'll let that go for another occasion.

For Freeman and Appelbaum, a dividend has many advantages over a tax cut. Chief among them is that "the stimulus [w]ould be targeted to people who need it. The prosperity dividend . . . would mean the most to low- and middle-income families with young children. (A married couple with two children would receive a total of $2,000.) These families would be likely to spend all or most of the dividend on goods and services. [Yeah, the rich

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would just invest it and make more money.] If they were in financial distress, they could use it to pay down credit card debts."

There's that word "need" again. Why is need the criterion? Because people like Freeman and Appelbaum do not believe an individual has the right to control his earnings and live for his own sake. Didn't some Russian-born woman novelist warn us about such people?

Very well. Let's accept need as the criterion. No one should get a tax cut unless he needs it. But if we are to avoid authoritarianism, we certainly can't have the government determining what people's needs are. The only solution, then, is to ask each taxpayer if he needs a tax cut. If a taxpayer says no, he won't get one. If he says yes, his taxes will be lowered.

What could be more fair?

* * *

For many people, environmental protection requires bureaucratic empowerment. The theory and practice are flawed, according to Christopher Lingle.

At least parts of the environmental movement assume that people intrude on nature, which would be better off without the human race. But the terms the environmentalists use belie their case, as Daniel Hager shows us.

Is the earth experiencing an unprecedented warming? Not by a long shot, writes Michael Heberling.

It can be difficult to see how quality education could result from a spontaneous, unplanned marketplace. Yet, says Chris Cardiff, there is a vivid example for everyone to see.

To hear the legislators and judges tell it, our rights are subject to exceptions and considerations of the purpose they were intended to serve. Jeffrey Snyder says that view leads to the destruction of rights.

If comic books are any measure of the state of the culture, what do they have to say about liberty these days? Raymond Keating conducts a survey of his favorites.

The government's postal service is taken for granted as a proper function of government. But Wendy McElroy reminds us that state control of the mail has always been about something other than efficient, courteous service.

The presidential oath of office and the Pledge of Allegiance are strangely different. Jim Peron explains why.

In Canada, the medical use of marijuana is permitted, but not the recreational use. Karen Selick has trouble squaring that conflict with the country's Charter of Rights and Freedoms.

Socialists everywhere celebrate May Day this month. William Peterson takes the opportunity to reconsider the father of "scientific socialism."

Here's what our columnists have come up with for this issue: Donald Boudreaux writes that the framing of a question is critical. Lawrence Reed defends term limits. Doug Bandow warns that the crusade against DDT is a tragic mistake. Thomas Szasz has some choice words for Dr. Kevorkian. Dwight Lee continues his look at the environment. Mark Skousen says you can't tell sound economics from Adam. And Charles Baird sounds the tocsin about a Clinton executive order.

Subjects catching the attention of our book reviewers are: fame, free speech, the history of the struggle for freedom, the efficacy of government, childhood, and Grover Cleveland.

—SHELDON RICHMAN

Correction

Twila Brase's February article, "Blame Congress for HMOs," included an incorrect date. The sentence should have read, "Congressional testimony reveals that between 1969 and 1971, physician fees increased 7 percent and hospital charges jumped 13 percent, while the consumer price index rose only 5.3 percent."

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Thoughts on Freedom

by Donald J. Boudreaux

Don't Be Framed

Experimental psychologists teach the importance of "issue framing." The details of how a problem is presented to someone—how a problem is *framed*—often affect his response to it.

Human brains aren't fleshy versions of silicon microprocessors; we are not general-purpose calculating machines. Rather, our brains evolved over countless generations to deal effectively with those specific problems that regularly arose throughout our history—problems such as determining if another person is trustworthy, or if a proposed exchange is beneficial.

Humans cannot quickly solve non-routine problems, such as calculating the square root of 323,761 or the distance between the earth and Venus. The reason is that too few of our ancestors confronted situations in which the ability to make such calculations gave them a survival advantage. But almost everyone understands immediately that ten apples is more than nine apples. Almost everyone understands that someone with shifting eyes, a sweaty forehead, and halting speech is probably lying. And researchers have found that each of us possesses an uncanny knack for remembering favors that others have done for us, as well as for remembering good deeds that we have done for others but that have yet to be acknowledged by them.

Put simply, we see and react to the world in certain specific ways. While our specialized ways of seeing and reacting greatly assist us in dealing with recurring and familiar problems, the downside is that if a familiar situation is framed in an unfamiliar way, the framing often causes us to misapprehend the situation.

Politicians frequently exploit issue framing as a means of fooling people into giving the state more power.

Here's an example. If I correctly point out that you shop at Safeway, you yawn and ask, "So what?"

But suppose that I instead say, "Hey, you're running a huge trade deficit with Safeway!" Especially if you view me as an authority, you might be concerned by this apparent revelation. You might even seek my help to eliminate this deficit.

My statement in this example is accurate (assuming that you don't work for Safeway). But rather than inform, it misleads. By framing the matter in terms of trade accounts, I appear to be telling you something other than that you shop at Safeway. But, in fact, that's all I'm really saying. I've deceived you with the truth—a truth framed in an unfamiliar way.

Of course you run a trade deficit with each merchant who supplies your needs! Such deficits are inevitable and beneficial. Whenever you shop at Safeway, you "export" money to Safeway in exchange for groceries "imported" by you from Safeway, and Safeway never buys any of your "exported" goods or services.

Nothing is amiss with such exchanges. But by framing the issue in an unfamiliar way, I can cause at least temporary anxiety in many people.

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Everyone is relieved when they learn that the "deficit" is merely the conventional label that economists use to describe the trade-account position with Safeway of each person who shops there. Armed with such new knowledge, people understand that their trade deficits with Safeway really aren't a problem.

Trade Deficit with Japan

Now let's change the example a bit. A politician announces that America has run trade deficits with Japan for the past two decades. "This problem must end. Congress should slap punitive tariffs on Japanese goods to get the Japanese to understand that we Americans will no longer be bullied by their unfair trade practices."

Such demagoguery is the stock-in-trade for many politicians and pundits. They frame issues in language that misleads the public into thinking that many non-problems are in fact problems requiring government intervention.

Among the many illusions created by such statements about international trade is the suggestion that trade is carried out by nations. Much mischief disappears as soon as we understand that individuals, not nations, trade. Japan never trades with America. Instead, individual Japanese trade with individual Americans.

And all trade is voluntary. Each exchange between someone in Japan and someone in America makes each trading party better off. But by framing the issue as two titans struggling in battle—"Japan" versus "America"—the peaceful, voluntary, and mutually beneficial nature of trade is masked.

Framing the exchange relationship properly—that is, describing international trade as always involving voluntary exchanges among consenting adults who happen to live in different political jurisdictions—helps to avoid two other dangers with the typical framing of trade issues by protectionists. The first is seeing trade as a zero-sum game; the second is forgetting that trade, ultimately, is about satisfying the wishes of consumers and not about enhancing the profits of producers.

By framing trade issues in nationalistic terms, it's easy to mislead unsuspecting folk into seeing trade as war in which the only choice is to support or obstruct "our" government's attempt to help "us" defeat foreigners. And all mention of trade *deficits* with the foreign country only heightens the fears of those who don't understand the reality. If "we" have a trade deficit with Japan because "we" buy more from Japan than "they" buy from "us," that must mean that "we" are losing something valuable to Japan through trade. Best to restrict the amounts that "we" buy from Japan, no?!

Some domestic producers, of course, have greedy reasons for encouraging the framing of trade issues in nationalistic terms. Doing so helps them win government protection from foreign competition. If trade is a war of "us" versus "them," and if the imports "we" buy from "them" contribute to "our" deficit with "them," then it seems only right to protect "our" producers from "theirs."

Consumers get lost in such framing. Nowhere is their welfare recognized. Instead, "our" side is seen as consisting of "our" firms fighting against "their" firms to determine who will sell the most on each other's shores. Any policies that help "our" guys outsell "their" guys is, therefore, seen as beneficial for "us"—or so the tale is told. But it's just a tale.

So, let's frame trade questions properly: all trade consists of voluntary transactions among willing buyers and willing sellers, each of whom expects to be made better off. The ultimate economic reason for free trade is that it allows everyone—including our fellow citizens—to spend their money as *they* see fit. Consumers thus get the most satisfaction possible from their incomes. Whenever government restricts consumers' buying from foreigners, it not only hurts domestic firms that would prosper in the export market, but also lets politicians second-guess people's spending choices. All trade restraints batter the rights of ordinary people to spend their money as they wish.

When framed in this way, protectionist arguments lose much of their luster. □

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IDEAS ON LIBERTY
MAY 2001

Cutting Off Subsidies Restricts Freedom?

It Just Ain't So!

One of President George W. Bush's first acts on taking office was to end taxpayer subsidies to private organizations that provide abortion services overseas. The bellyaching was predictable and deafening. What is sadly emblematic of our time is the fallacy that underlay the protest.

Typical was the *New York Times* editorial of January 24, which said, "It is a form of arrogance to impose a *gag rule* on doctors and health advocates in other countries as the price of receiving vital assistance for its poorest and most defenseless citizens, particularly its women, especially when it involves an activity that is constitutionally protected in the United States." (Emphasis added.)

Let's start by pointing out that this is not an article about the moral status of abortion. It's about *taxpayer funding* of abortion (and by implication, of anything else). One's position on abortion per se logically should have no bearing on one's position on the matter I am about to discuss.

In the 1980s President Reagan adopted what came to be known as the Mexico City policy; it barred taxpayer subsidies to Planned Parenthood and other groups that do abortion counseling abroad as a method of family planning. It was already contrary to law for those organizations to use tax money for abortion. But since money is fungible, the Reagan administration extended the policy to bar subsidies altogether.

That policy was reversed by President Clinton. Now the reversal has been reversed. In doing so, Mr. Bush said, "taxpayer funds should not be used to pay for abortions or advocate or actively promote abortions either here or abroad." It is puzzling why he included the word "here," when his order affects only activities abroad. The federal government still subsidizes domestic family-planning clinics that offer abortion counseling and services (Clinton reversed Reagan's ban on that), and Medicaid still pays for abortions. Moreover, foreign aid still goes to governments that pay for abortions.

Nevertheless, the policy stops the flow of taxpayer money to private abortion counselors and practitioners in foreign countries.

This is a good thing. Why? Because some of the people whose money finances those activities believe abortion is murder. Whether we agree with them or not on that question, we should be able to agree that people ought not to be forced to pay for what they regard as murder. It is ironic that abortion-rights advocates (properly) object to having other people's religious views forced on them, but they think nothing of forcing their moral views on others through compulsory financing. As Thomas Jefferson famously said, compelling people to finance causes they disagree with is "sinful and tyrannical."

Proponents of taxpayer funding of abortion, such as the *Times*, obfuscate by fusing the freedom to do something with taxpayer funding. They argue that withdrawing subsidies is equivalent to banning abortions. Notice how the editorial invokes the constitutionality of abortion—as though if something is constitutional, it ought to be subsidized. A similar argument is made by those who say that failing to subsidize a particular artist is "censorship." Of course, that's absurd. Lots of things that are unsubsidized are done legally every day. The issues are entirely separable. The *Times* knows that, but its political agenda depends on not acknowledging it.

It doesn't take much intellectual candlepower to see that there's a huge gulf between stopping someone from doing something and abstaining from lending a hand—or from forcing others to do so. In a society widely

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touted as free, that should be a rather elementary distinction. What are we to make of those who are determined not to see it?

The idea that the withdrawal of subsidies constitutes a "gag rule" is ludicrous. No one is stopped from promoting abortion by Mr. Bush's order. Those who today promote abortion can continue until they run out of breath. They just can't have the taxpayers' money if they do so. That rule violates no one's freedom.

As for those who are concerned about government's attaching strings to the money it gives away, welcome to the real world. It has always done so. What would you expect? Let no one forget my colleague Beth Hoffman's favorite quotation from a U.S. Supreme Court opinion, "It is hardly lack of due process for the Government to regulate that which it subsidizes" (Justice Robert H. Jackson in *Wickard v. Filburn*, 1942). You don't like the rules? Don't take the subsidies.

Why Abortion?

Some might ask why start with subsidies for abortion? Mr. Bush has his reasons. But as advocates of limiting government power, we need not care what his reasons are. The point is, he chose the issue, and we must seize opportunities to roll back government as we find them. Had he picked art subsidies, we could have jumped on that issue.

The Bush policy provides a news hook to point out that it's wrong to force people to finance what they disapprove of. There are many more examples besides abortion, but we have to start somewhere. We should be ready to up the ante by showing that opponents of abortion are not the only people who deserve to have their sensibilities—not to mention their rights—respected. It has always been part of the classical-liberal, or libertarian, case that big government necessarily violates freedom of conscience. Here is an excellent example.

It has been pointed out that through selective subsidies, government can be highly manipulative and that it should not have the power to carry out a particular moral agenda by banning subsidies to particular activities, as Mr. Bush has done. Clearly, the best solution is to end all subsidies of private activities. No one has a right to other people's money without their consent. But it does not make sense to say that *no* subsidies should be ended until *all* subsidies can be ended. That is a blueprint for perpetual subsidies.

Libertarianism, or true liberalism, as Jeffrey Rogers Hummel reminds us, is simply a plea for consistency. No one believes that a woman personally has a right to force her neighbors to pay for her abortion. No private group of women can have rights not possessed by any of its members. Thus no nation of women (and men) can legitimately *vote* to force their neighbors to pay for abortions. When it comes to other people, all we have a right to do is try to persuade—no more. If we fail, that's too bad. But basic civility dictates that we not resort to force. □

—Sheldon Richman
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Editor

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IDEAS ON LIBERTY
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Environmentalism as Though People and Facts Really Mattered

by Christopher Lingle

One of the most compelling political issues of the new millennium is to discover ways to arrest and reverse the debilitation of our natural environment. To many observers, no less than a revolution is necessary to change public opinion and to implement policies to correct a wanton disregard for the environment. However, accomplishing these ends requires careful thinking about what role and impact governmental policies might have.

Protection and rehabilitation of the environment are indisputably worthy goals, so the nature of the debate is over methods rather than objectives. The quest for solutions should begin with the understanding that government interventions can be a cause rather than a remedy when it comes to environmental damage. Failures by governments to serve as guardian of the environment are evident in the ecological destruction in the authoritarian socialist economies of the former Soviet Union and China.

Although the authoritarianism associated with communism is now widely rejected, ecologically based authoritarianism could replace it. "Ecologism" is used here to describe state-imposed interventions, regulations, and coercion motivated by blind adherence to protecting the natural environment without regard for the impact on the *human* environment. Freedom of choice and personal self-determination should also be considered when measuring quality of life.

Taken to a logical limit, ecologism would replace bureaucrats motivated by scientific socialism and social engineering with technocrats guided by "scientific" evaluations of environmental impacts. In the end, both approaches apply a logic that would impose restraints on individual behavior that are said to serve the wider community.

Perhaps the worst failure of socialism is that the pursuit of social goals can easily lead to unintended and unforeseen destruction of individual rights on an extensive scale. German National Socialists under Hitler implemented policies that might warm the heart of some of the most extreme ecologists of today. One element of the guiding philosophy of the Nazi Party (*Gemeinnutz vor Eigennutz*) promoted the good of the whole over the good of the individual. This view supported racial hygiene, or racial purity, and included attempts to halt alcohol and tobacco consumption. It is doubtful that Nazi supporters in their early days could have dreamed of the terrible outcomes of their ideology.

In all events, caution is in order in relying on much of the conventional wisdom that sup-

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ports anxieties over environmental deterioration. Many of the accepted truths of the Green movement are based on dubious facts and spurious reasoning. Just as Hitler relied on false generalities about Jews and gypsies, environmentalists gain support by generating a certain amount of hysteria over issues that are unsupported by logic or science. Perhaps, the most famous case is the unfulfilled prophesies (fantasies?) of the Club of Rome report ("Limits to Growth") that pointed to inevitable global conflict arising from resource depletion.

Intolerance Toward Free Choice

Ecologism tends to encourage intolerance toward individual choice and conceals a distrust of private property. Ecoterrorism and the confiscation or destruction of private property to promote an environmental agenda is unfortunately accepted in a wide community. Such attitudes were also evident under authoritarian regimes whether guided by right-wing or left-wing ideologies.

While attempts to halt degradation of the natural environment can lead to degradation of the human environment, they may also slow progress toward correcting problems in the natural environment. Excessive restraints on individuals based on ecologist logic would certainly make the community worse off. In a modern market economy entrepreneurs are the engines of economic growth and innovation. Suppressing access to market-based rewards will slow the pace of technological advance and dampen gains in income. Evidence confirms that improvements in technology and higher income levels provide the means and motivation for environmental protection.

In all events, government intervention and regulation are not the only vehicles to resolve environmental problems. Economists have exerted considerable effort to examine ways in which the pricing systems can bring about desired reductions in pollution and similar problems caused by the "tragedy of the commons." Examples of market-based mechanisms for resolving environmental problems include marketing pollution rights, privatizing wilderness areas and wildlife, and innovative techniques like "tagging" that would allow for the identification of ownership of dispersed resources or to the tracing of the sources of pollution.

Each of these proposals relies on providing individual incentives that encourage better monitoring of the use of resources and the environment. Private ownership allows individuals to benefit directly from conservation and preservation since they benefit from enhancements in value. This provides a strong incentive to carefully exploit natural resources to provide maximum returns.

The beginning of the new millennium provides the world community with some mixed omens of hope for the future. While the global demise of authoritarian regimes merits three cheers, the outcomes from the heightened awareness of environmental issues might warrant only one or perhaps two cheers.

It is as though a new set of "environmental rights" is being imposed that clash with property rights and individual rights. If these rights are threatened, it will actually weaken the support for environmental protections. For environmentalism to thrive and serve its purposes, it should take into account that individuals really do matter. □

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True Ecology

by Daniel Hager

Ecology is generally considered to be a branch of biology. It does not belong there. An examination of the subject indicates a better home for it.

Ecology is defined as the study of organisms in relation to their animate and inanimate surroundings. It focuses on the connections and dependencies among organisms.

The Oxford English Dictionary states that the term entered the English language in 1873 in a book by Ernst Heinrich Haeckel (1834–1919), *Natural History of Creation,*[1] which was a translation of a work he published in Germany in the late 1860s. Haeckel was a German biologist partial to Charles Darwin's ideas and helped popularize the theory of evolution in Germany.

Absent any modifier, ecology is limited to the world of nature. Biologists invented other words incorporating the "eco" root to describe natural phenomena, such as ecotype, ecophene, ecospecies, and ecosystem. Since the 1960s, ecology has become a vogue word and its root is used loosely as a synonym for the natural world, as in combining terms like "ecoactivist" or "ecodisaster."

The 1960s also modified and narrowed the English words derived from the Old French for "in" and "circuit"—*en viron.* The verb "environ" means to form a ring around, to encircle, or to surround. The noun "environment" historically referred to that which environs—that is, surroundings. For a time its most prominent use was in psychology and sociology, where environmentalism was defined as a theory that environment was a primary influence on human development and heredity was of secondary importance. But since the 1960s, environmentalism has connoted a viewpoint on how to regard not surroundings in general but only what is considered "nature." An environmentalist in contemporary usage is a particularist focused on nature as an entity under duress by the activity of humans.

The position postulates a cleavage between nature and humans, as if people were not a part of the natural world. Human impacts are therefore intrusive and destructive and must be tightly regulated.

However, the divorce of humans from nature is artificial and untenable. Environmentalists implicitly admit as much. An extreme view of some is that humans are inherently polluters and plunderers and, for the sake of all "natural" species, should be obliterated from the earth. That position presupposes that nature is normative. But no other species is capable of normative judgments. Hence nature is incomplete without man to serve the function of normative agent. Man becomes a necessity in nature.

Similarly, value judgments contained in such phrases as "damaging the ecology" or "destroying the ecology" also fuse man as an inextricable part of nature. From a detached scientific standpoint, ecologies in nature are neutral, merely phenomena to be studied. A

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change in one set of ecological relationships creates simply a different set of ecological relationships. Placing relative values on various ecologies brings the person doing so into a relationship with the relationships. The human becomes part of the ecology.

The term "ecosystem" also presupposes human involvement. The premise of ecology is that everything is ultimately connected to everything else. Thus there can exist only a single ecosystem, the solar system at the least if not the universe. A swamp is connected to precipitation patterns that alter its dimensions and characteristics, and precipitation patterns are connected to ocean currents, whose fluctuations are connected to other natural phenomena, and so on. Thus what is usually referred to as an ecosystem is actually an arbitrarily delimited subset of the one great ecosystem. On a practical level, an ecosystem may be defined as a crude human construct devised in an attempt to model a portion of the natural world. An ecosystem is a product of a human desire to deal with objective reality. As such, the essential element in any ecosystem is the human mind.

Human Presence

The inescapable human presence within ecology is also suggested by the term itself. Although inventors of new words can define them however they wish, Haeckel's apparent thought process is instructive. For the root, he appropriated the Greek word for house. Ecology literally is the study of the house.

A house implies fabrication or manufacture achieved through rational intelligence. The various types of dwellings formed or built by animals for their protection take terms other than "house" in our vocabulary—den, burrow, or nest, for instance. Houses are for humans and constructed through human aptitudes. The metaphor of house for nature suggests that nature exists for the sake of humans.

The question humans ask is what to do with that house. Thus ecology leads naturally to economics.

The English word "economy" and its derivations trace their origins to the Greek words for house and manage. The initial and now-archaic meaning of economist is one who manages a household. Economy later became applied to institutions beyond the home. Management entails prudence in the use of material resources, including money, so "economical" came to be associated with savings and thrift. Economics expanded from its narrow sense of the science of managing a household to "the science relating to the production and distribution of material wealth," as *The Oxford English Dictionary* defines it.[2]

Economics studies how human activities create or impede the creation of wealth. Ecology, as a branch of economics, studies natural relationships, including the urge by many members of the human component in those relationships to manage nature into the creation of wealth.

The urge has not been universal across time and place. Mankind's history is replete with cosmologies that stifle material progress and create poverty instead of wealth. To improve their situations, humans need the freedom.

Animists are repressed from progress by their fear-driven passivity to nature, an avoidance of tampering with it lest the spirits that inhabit natural objects unleash their fury. A variant of this primitivism is a current environmentalist mantra ascribed, spuriously, to an obscure leader of a mid-1800s band of Puget Sound Indians named Seattle: "This we know: The earth does not belong to man, man belongs to the earth." That statement is a formula for a level of poverty and squalor under which no modern-day environmentalist would care to exist. □

1. *The Oxford English Dictionary* (Oxford: Clarendon Press, 1989), vol. V, p. 58.
2. Ibid., p. 59.

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IDEAS ON LIBERTY
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Unprecedented Global Warming?

by Michael Heberling

One of the most contentious issues of the day is global warming. Those who openly discuss the subject fall into one of two camps. First, there are the environmental alarmists who only see the world in terms of urban sprawl, deforestation, and pollution. For this group, global warming provides the much-needed justification to curtail, or reverse, our current level of earth-unfriendly economic activity. The other group sees no evidence of harmful global warming. They view the draconian anti-business remedies as both unjustified and misguided.

Given the high stakes (from both a monetary and an emotional perspective), it should come as no surprise that there is a temptation for the first group to play fast and loose with the available scientific data. Findings that support global warming are highlighted, and those that do not are downplayed, omitted, or politicized. Global-warming computer models are frequently little more than high-tech "crystal balls." With the multitude of variables and assumptions that come into play, these computer models become highly suspect. In deciding which model to use, the critical question becomes: "How scary do you want the future to be?"

Ground zero in the global warming debate is the 1997 Kyoto Protocol Agreement. This treaty, yet to be ratified by the United States, calls for a reduction in greenhouse gases and fossil-fuel emissions to a level 5 to 7 percent below the 1990-benchmark year by 2012.[1] The estimated compliance cost for the United States will be $300 billion a year.[2] But the global solidarity to end global warming had a temporary setback last November at The Hague. Participating countries were unable to work out the details.

The Kyoto Protocol seems to be built on the following two assumptions: First, global warming is a function of human activity (with the biggest villains being automobiles, factories, and power plants), and second, we are currently experiencing unprecedented levels of global warming. However, a review of the earth's most recent "geological history" brings into question both assumptions and puts the entire subject in a different light.

For over a million years, the earth has undergone a succession of glacial and interglacial periods. Each glacial period lasted anywhere from 70,000 to 100,000 years. In the most recent one, ice covered all of what is now Canada and the northern third of the United States.[3] To date, each glacial period has been followed by a very warm, yet much shorter, interglacial period of 10,000 to 30,000 years. In some of these interglacial periods, ice covered less area than today.

The last ice age ended approximately 10,000 years ago. This was followed by a period of significant global warming that lasted *—5,000 years*. The average temperature in

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this time frame was 2 to 3 degrees Celsius higher than we find today. This caused the sea level to rise over 100 feet. The warmer climate also made it possible for broad-leafed forests to grow in latitudes much farther north than they do currently. In the most recent 5,000-year period, there have been numerous periods of distinct global warming and global cooling.[4] However, the overall long-term climatic trend indicates that the earth has been getting *cooler*, not *warmer*.

Agriculture Flourishes

There was a very pronounced medieval warm period from 700 AD to 1400 AD. Indirect evidence suggests that the average temperature was as much as 1.5 degrees Celsius warmer than today. In Europe, agriculture flourished at latitudes farther north and at higher elevations than today. Vineyards, which require sunny and warm conditions, existed in areas 300 miles north of the present limits. The cultivation of grapes for wine-making was extensive throughout the southern portions of England from about 1100 to around 1300. The amount of English wine produced was enough to provide significant competition with the French. As further evidence of a much warmer climate, the tree line in the Alps was 300 meters higher than we find today.[5]

This warm period made it possible for the Vikings to establish colonies in Greenland and Iceland. Greenland, which could honestly be called a green land, was settled near the end of the tenth century. The colony flourished with between 5,000 and 6,000 residents.[6] Sheep and dairy cattle were able to graze in areas that are today—*icebound*.[7]

By about 1400 the climate had cooled to temperatures that approximate what we see today. However, evidence from a number of sources—glacial sediments, tree rings, and written records—show that from the beginning of the fifteenth century until the mid-nineteenth century major cooling continued to take place in most parts of the world. This period came to be known as the "Little Ice Age." Glaciers around the globe in Europe, New Zealand, North America, and Greenland advanced and have only recently started to recede. The freezing of the Baltic Sea and the Thames River in England became a regular occurrence. London had its first "Frost Fair" on the river in 1607. This winter festival was an annual event until it was discontinued in the 1800s with the return of warmer winters.

The settlements in Iceland and Greenland were especially hard hit by this period of global cooling. Iceland lost half its population. In Greenland, farms were abandoned as the permafrost level rose and glaciers advanced. We do not know exactly how the Greenland colonies came to an end because growing sea ice cut off all contact with the outside world in 1410.

More Global Warming

During the last 150 years there has been another fairly sustained period of global warming amounting to an increase of about 0.7 degree Celsius. In spite of rhetoric to the contrary, the majority of this warming took place naturally before 1940. This warming trend was interrupted by a 35-year cooling period from 1940 to 1975. This caused many climatologists to actually predict that we were entering another ice age.[8] At that time the public was obsessed with "global cooling." Today, our obsession is "global warming."

This review of the post–ice-age epoch shows that global warming is, in reality, both *common* and *natural*. In fact, for most of this period, the temperatures were much warmer than we see today. While our current level of industrial activity probably contributes to global warming to some degree, the increases that we have seen in the last 25 years are by no means unprecedented.

After viewing global warming from this alternative perspective, it is hard to justify the strong medicine prescribed by the Kyoto Protocol. Ironically, given the fact that the long-term climatic trend suggests global cooling, rather than global warming, our industrial/economic activity may actually serve to impede the natural cooling process. Under these circumstances, the environmental alarmists may

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want to adopt a new warning label: *Enjoy the warm weather, while it lasts!* □

1. Jerome Socolovsky, "Climate Delegates Reject Compromise," Associated Press, November 24, 2000.
2. "Global Warming's Polarized Debate," *Detroit News*, September 1, 2000.
3. Thomas J. Crowley, "Remembrance of Things Past: Greenhouse Lessons from the Geological Record," *Consequences*, Winter 1996.
4. "Holocene Epoch," www.britannica.com, 1999–2000.
5. Richard D. Tkachuck, "The Little Ice Age," *Origins* 10(2), 1983, pp. 51–65.
6. Kathy A. Svitil, "The Greenland Viking Mystery," *Discover*, July 1997.
7. Alan Cutler, "The Little Ice Age: When Global Cooling Gripped the World," *Washington Post*, August 13, 1997.
8. Science Update—August 28, 1997, "Climate Change in Perspective," www.globalwarming.org.sciup/sci8-28.htm.

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Why Term Limits?

Early in the 1990s a grassroots movement to limit the terms of elected officials in various public offices blossomed nationwide. Term-limit ballot initiatives passed in 19 states, usually by landslide margins. The U.S. Supreme Court threw out all state-imposed term limits on federal positions in 1995, but those for state and local offices were affirmed. The term-limits movement has slowed in recent years, and in a growing number of states the political establishment is fighting back. Quietly in most cases, lawmakers are starting to talk up the idea of extending the length of terms voters chose to limit, or to repeal the restrictions altogether. But the reasons the term-limit concept caught on in the first place remain as potent as ever.

It was Benjamin Franklin who summed up the best case for term limits more than two centuries ago: "In free governments, the rulers are the servants, and the people their superiors. . . . For the former to return among the latter does not degrade, but promote them."

In other words, when politicians know they must return to ordinary society and live under the laws passed while they were in government, at least some of them will think more carefully about the long-term effects of the programs they support. Their end-all will not be re-election, because that option will not be available.

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Nationally, the notion of the "citizen-legislator" remains a popular vision. The public is justifiably cynical about the hollow promises of so many lifelong professional politicians who are often purchased with special-interest money. Opponents of term limits are frequently the same interests who milk government for all they can get, such as defense contractors in Washington or the teacher unions in state capitals.

Opponents charge that limits are inherently antidemocratic, that people should be free to elect to office whomever they want and that voters inherently have the power to limit terms simply by voting incumbents out. But judging by the huge support that term limits have usually won at the ballot box—and still enjoy in most local polls—large numbers of citizens feel that a political system without limits is a stacked deck. Any system that allows incumbents to amass so much power and attention in office that challengers can rarely win is surely in need of a corrective.

Term-limit advocates properly point out that we already fix all sorts of restrictions on who can and cannot hold office, no matter how popular they may be—from age and residency requirements to two four-year terms for the president. Indeed, it isn't widely understood that term limits is an old concept. With regard to municipal offices, it dates back at least to 1851, when the Indiana state constitution imposed them for almost every elected county office.

A 1998 report from the Cato Institute offered an intriguing response to the "We

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don't need term limits because we can simply vote the bums out" argument. Author Einer Elhauge states, "Districts with highly senior legislators often impose externalities [burdens such as higher taxes] on other districts by securing the enactment of provisions the other districts dislike either on ideological grounds or because they bear the financial cost. . . . Voting your bum out is not a solution when what you want to do is oust the other districts' bums. For that you need term limits, which oust the other districts' more senior bums and thus strongly increase equality in legislative representation."

Without long-term legislators, according to another anti-term-limit argument, "inexperienced" legislators won't be able to control the permanent bureaucracy. That's a red herring. Legislators ultimately control the purse and the power to control the bureaucrats any time they want to, and we must not overlook the unholy alliances built up between bureaucracies and long-term legislators. Surely, the "experience" of living as a private citizen under the rules and taxes one voted for as a legislator is just as valuable and instructive, if not more so, than the experience of cooking up those rules and taxes in the first place.

Term limits have been approved almost everywhere they've been on the ballot because concerned citizens see them as a positive structural reform, a necessary step to change the incentives of legislators so they would think more about the good of their states and country and less about their next campaign. Those citizens want to ensure a regular supply of fresh blood and new ideas in legislative bodies. They want to open the system to more people from a variety of professions. They want to make public officials less responsive to organized, well-heeled lobbies and more interested in serving the welfare of society at large.

But what about that paramount issue of great interest to readers of this magazine—the issue of individual liberty? Do term limits enhance or detract from its protection?

For sure, people in a free and democratic society ultimately get the government they vote for. Term limits cannot guarantee either individual liberty or good government if voters with bad ideas replace bad legislators with other bad people. Ben Franklin may have supported term limits, but he also believed, with John Philpot Curran, that in any event, "The condition upon which God hath given liberty to man is eternal vigilance."

However, the evidence suggests that at the margin, term limits are helpful to the cause of individual liberty. Elhauge's report showed that term limits lessen the influence of seniority. His research demonstrated that long-term lawmakers from both major parties vote for more bureaucracy than do lawmakers who have been in office for shorter times. Term limits lessen the ability of lawmakers to develop cozy deals with either bureaucracies or special interests that seek to get something from government at everyone else's expense.

Stephen Moore, writing for the Cato Institute, says that an examination of the voting behavior of congressmen reveals that on a wide range of liberty-related issues—"not raising the minimum wage, defunding the National Endowment for the Arts, closing down the Legal Services Corporation, and cutting taxes—junior members [are] less likely to vote to tax, spend, regulate and otherwise stick Washington's nose in our private affairs than [are] the old bulls."

Term limits do not yet exist for members of Congress. Do we need a reminder that long-term pols with lots of "experience" in Washington have blessed Americans with trillions in debt and a federal government that sucks more and more from our wallets year after year after year?

It says a lot that virtually every group that lobbies for more government power and wealth redistribution opposes term limits. When they buy a lawmaker, they want him to stay bought and stick around a while. □

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Toward an Educational Renaissance

by Chris Cardiff

Can parents be trusted to educate their own children? The underlying assumption of America's vast government school system is that they cannot. Yet homeschooling families, illustrating the powerful concept of spontaneous order in a free society, belie that assumption.

Education is at the top of every politician's list of promises these days. Each one wants to be perceived as doing something "for the children." Debate rages between "liberals" who want to throw more money at the present system and conservatives and (some libertarians) who want to introduce pseudomarket reforms (charters, vouchers) to improve it. Rarely do you see anyone, much less a politician, challenge the fundamental premises of state-sponsored and -mandated education.

Behind all the reform rhetoric remains a system based on tyrannical principles. Every single state has compulsory attendance laws and educational statutes prescribing a mandatory curriculum. Failure to comply leads to a range of legal penalties, from fines through confiscation of children due to "educational neglect."

The terms of the debate need to be changed. Rather than arguing about competing means to reform the existing system, we need to discuss the advantages of educational freedom versus educational tyranny. Education statists will argue that the free market could never create a comprehensive and "fair" educational system. Education elitists will argue that parents can't know all their children need to know. Education freedom fighters can counter those arguments and illustrate the advantages of a free market in education by pointing to the spontaneous order found within the homeschooling community.

How can parents teach everything a child needs (or wants) to learn? They can't. However, this is one of the most frequently asked rhetorical questions by critics of homeschooling. It is derived from the Kitchen Table Myth—the belief that mom provides all the instruction the kids need while sitting around the kitchen table.

Obviously parents aren't experts in every possible subject. This is one of the reasons families band together in local homeschooling support groups. From within these voluntary associations springs a spontaneous educational order. An overabundance of services, knowledge, activities, collaboration, and social opportunities flourishes within these homeschooling communities.

Throughout the United States homeschooling families have created their own educational communities. There are local, state, and national groups. There are online groups (over 500 virtual communities are listed at egroups.com alone). These homeschooling support groups are every shape and size—from a couple of families who get together

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regularly for field trips, to the thousands of families that descend on a statewide homeschooling convention, to the tens of thousands of families who have joined the Home School Legal Defense Association.

The diversity of the homeschooling community is reflected in the variety of support groups. The primary reason binding a group together can be political, geographic, religious, educational, or activity-based. Within these, the organizational structure can be top-down, bottom-up, or consensus-driven. And just like any endeavor in the free market, some groups succeed and some fail. However, the breadth and depth of these experimental educational communities demonstrate the power of individuals to create their own educational environments.

There is nothing within the confines of the institutional setting of the government school system that has not been duplicated or improved on in the homeschooling movement. Individuals and groups sponsor sports leagues, yearbooks, choirs, bands, orchestras, spelling bees, dances, debate contests, science fairs, geography bees, newsletters, math olympiads, and foreign exchange students. Different educational models, ranging far beyond parents as sole instructors for their children, also proliferate within homeschooling.

These educational models include new ones, like distance learning, as well as the rediscovery of old ones, like apprenticeships. They include parent co-op teaching, where parents swap instructional services in areas where they have expertise. They incorporate some of the institutional paradigm as well when professional teachers are hired to teach specific courses. But they also include concepts like unschooling, or child-led learning, a model antithetical to the traditional institution-based learning.

The Power of Voluntary Associations

All Ways Learning (AWL) is one such local homeschooling support group. Now in its fifth year, AWL has over 100 participating families. It's one of several homeschooling support groups in Silicon Valley, but not the largest.

AWL is a nonhierarchical group open to all families. There are no formal leaders and no dues. There are no group decisions made in AWL. All events, services, and classes are sponsored by individuals who decide on parameters such as age limits, cost, timing, and size. Anyone uncomfortable with the structure of an activity (or unable to participate because of one of the restrictions) is encouraged to design and start an alternative. This framework provides maximum freedom for individuals, maximum choice for participants, and minimum hassle in trying to design a one-size-fits-all system for everyone.

This lack of centralized planning results in a rich set of services and activities for families participating in AWL. Academic services include some of the educational models mentioned above. The natural extension of teaching your own children is co-op teaching where parents who are subject specialists offer their services to other families. Classes led by AWL parents over the years cover a wide range: art, biology, history, Latin, literature, math, Red Cross babysitting, and Russian.

Classes led by professional teachers are also found within AWL's repertoire. Professional teachers from local schools are hired and the classes are held either in a local community room or a home. Science and Spanish are the most popular courses led by professional teachers. Both have grown in popularity over the years so that now they are offered for three different skill levels.

The AWL calendar is filled with dozens of other learning opportunities. Field trips and hands-on learning are ever popular, with several scheduled each month for different age groups. The monthly newsletter provides publishing opportunities for writing and drawing. The Geography and Culture Club explores a new country every month. The annual spelling bee sends a representative to the regional Scripps Howard contest in San Francisco each year. The math olympiad team competes with teams around the country. The AWL Music Hour features performance opportunities bimonthly.

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What About Socialization?

AWL is equally rich in social opportunities for kids and parents. Park Day is the mainstay, with dozens of families meeting weekly. Parents chat around the picnic tables, toddlers romp on the swing sets, younger kids dart around playing tag, and older kids race back and forth playing Ultimate Frisbee. On rainy days, meeting at a local bowling alley or playing games at a community center is a preferred alternative.

Other regular social opportunities include the usual holiday parties (Valentine's Day, Halloween, and Christmas), a barbecue at the beginning of the year, and the annual end-of-year gala, which combines a talent show, graduation, awards night, and party all in one. In between, Mom's Night Out provides a break for parents, while kids have the Digit Clubs (Little, Single, Double, and Teen) for regular age-specific playtimes and get-togethers.

Helping to bind AWL families into a community are the monthly newsletter, several online e-mailing lists, annual AWL group photo, and a yearbook. This educational community is the result of individual families working to create opportunities for themselves and in turn making these opportunities available to other families. The extensive social and academic opportunities in AWL exemplify Tocqueville's long-ago observations on the primacy and importance of voluntary associations in America.

Beyond the educational communities that homeschooling families have built for themselves, there is an infrastructure growing up to support them. With more and more families choosing homeschooling, the market for education services has moved to embrace them. Textbook publishers create special homeschooling editions. Advanced Placement courses aimed at homeschoolers are available over the Internet. Teachers offer their expertise as individual tutors or class leaders.

Those reaching out and sustaining the homeschooling market include many name-brand vendors. Barnes & Noble offers homeschoolers teacher discounts. State Farm Insurance offers homeschoolers "good student" discounts. Jostens offers homeschoolers yearbook services. Stanford University hosts admissions seminars for homeschoolers.

And surprisingly, even government schools have introduced homeschooling programs. While demonstrating that a virtual monopoly can respond to market pressure, these programs present both an opportunity and a threat to the independent homeschooling movement.

For some families, these government programs are a stepping stone to independent homeschooling. Recognizing the value of the resources available within the independent homeschooling communities, resource teachers in these programs refer families to local support groups, subscribe to their newsletters, and on occasion go so far as to hire homeschooling parents to teach within their programs.

However, states also use these programs to extend their control of education. Some states try to force homeschooling families to use their programs. Others require government school officials to review and approve the educational programs of all homeschooling families in their district. These regulatory efforts make it clear that the government school system won't give up its monopoly on education willingly and is prepared to use the force of government to combat the free market.

Educational Freedom Works

From the collapse of communism to the bounty on our supermarket shelves, Americans are reminded daily of the miracles of a free market. Yet despite the overwhelming evidence, we remain mired in a centralized, top-down, government-run education system. The idea of a free market in education seems unbelievable to many.

The homeschooling movement is slowly converting these unbelievers. All Ways Learning is just one example of a self-organizing educational community. There are many other communities and many other ways to organize them. These homeschooling communities are marvelous examples of how spontaneous order works in a free society and are a microcosm of the educational renaissance we can expect with true educational freedom. □

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Rights Without Exceptions

by Jeff Snyder

The statements of rights in the Bill of Rights are categorical and contain no exceptions. This form suggests that the rights referred to do not vary to suit the circumstance, are not to be "outweighed" in balancing tests with other rights or interests, and are not subject to unstated exceptions: Congress shall make *no law* abridging the freedom of speech or of the press; the right to keep and bear arms *shall not be infringed*; the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures *shall not be violated*, and so forth. Qualifications such as, "unless presenting a clear and present danger," "except to the extent inconsistent with public safety," or "unless outweighed by a compelling state interest" simply are not there.

Are those categorical statements of rights mere rhetorical excesses cleverly penned to overcome the objections of the Anti-Federalists to the new federal government, while the Federalists well knew that the actual rights were and would be subject to numerous exceptions? Are our rights in fact subject to "reasonable" regulation in the interest of public safety or for other good purpose?

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Before inquiring into this matter, it is necessary to make some preliminary observations to avoid misunderstanding. In arguing, as I will below, that our rights are not subject to *any* exceptions, I do not wish to be mistaken as arguing that we therefore may not be held accountable for the consequences of the exercise of our rights, that we may not be punished if we violate the rights of others, or that we may not be deprived of life or liberty by due process of law.

I distinguish between *exceptions* to a right, by which I mean instances in which the right is declared to be not available on grounds exterior to the right (such as "public safety") even though the exceptions otherwise fall completely within the ambit of the right, and the *limits* of a right, by which I mean, first, the activities within the ambit of the right, judged by historical understanding and historical practices and customs, and, second, how far the right extends vis-à-vis others.

Thus I would consider the question of whether the right to keep and bear arms includes a right to keep or carry stinger missiles or nuclear or biological weapons a question of the limits of the right, not of exceptions to the right. Historical customs and practices may reveal that our forefathers understood the right to include only such arms as are suitable to private and individual self-defense and the basic weapons required for service in a militia, and not weapons whose overly powerful or indiscriminate nature render them specialized weapons of

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mass destruction suitable for use only in war. To use my terminology, cannons, tanks, stinger missiles, and the like would be outside the ambit of the right, rather than exceptions to it.

As noted, there is a second sense in which rights have limits, namely, how far they extend as against the rights of others. In this regard, it is important to note that the rights in the Bill of Rights are against the government; they are *not* rights against private individuals. They proclaim that the government may not exercise power over certain activities; as between you and the government, it must suffer you to engage in the activity that is within the compass of your right. Government has no rights, only powers. Therefore, your right simply disempowers it with respect to the protected activities. However, as among persons with equal rights entitled to mutual respect, one right is not a license to violate another. As between private persons, the limits of a right are always the rights of others.

Thus it is never a violation or infringement of your right for government to punish you for violating the rights of others (presuming, of course, that this is done through due process of law), and your "right" does not grant you license to violate, or grant you immunity from the consequences of violating, the rights of others.

For example, the Second Amendment denies the power to the federal government to infringe the right to keep and bear arms. The right exists against the government only, and not private individuals. It prevents government from imposing a prior restraint on the keeping and bearing of arms (such as a permit requirement) or from criminalizing the mere keeping and bearing of arms. But among private individuals, the right is limited by the rights of others. If a movie-theater owner wishes to exclude persons who carry weapons, his property rights entitle him to do so, and if you carry in violation of his rights, you are trespassing and the government can punish you for violating his property rights.

Are There Exceptions?

With these distinctions and qualifications in mind, let's examine whether there can be exceptions to the rights in the Bill of Rights. Take, for example, what is possibly the most bedrock, "common sense" gun restriction on the books: the prohibition against the ownership or possession of firearms by convicted felons. (We mean of course those who have been convicted of a felony but are no longer serving time or on probation, and have been fully released back into society.)

There seems to be no comprehensive historical or legal investigation of this exception. The restriction seems not to have existed at the time the right to keep and bear arms was memorialized in the 1689 English or 1789 American Bill of Rights. The great commentator on the English common law, Sir William Blackstone, makes no reference to such an exception in discussing the rights of Englishmen.

I asked historian Joyce Lee Malcolm, author of *To Keep and Bear Arms: The Origins of an Anglo-American Right*, whether she was aware of such a prohibition during the seventeenth and eighteenth centuries. She said that she was not, but that it would have been something of a non-issue because most felonies in those days were punished by death. The "felon exception" thus becomes an issue only in subsequent generations, when for humanitarian or other reasons more and more felonies are punishable solely by imprisonment or, viewed from the reverse perspective, fewer and fewer serious crimes (that is, crimes worthy of punishment by death) are termed felonies.[1]

Clayton Cramer's excellent history of the courts' treatment of the right to keep and bear arms, *For the Defense of Themselves and the State*, contains intermittent discussions of the exception. The first American court cases to discuss it appear in the early 1900s, suggesting that the state statutes creating the exception were also enacted at about that time. Early and modern state court cases upholding the exception did so on the dubious ground that the Second Amendment does not apply to state legislation and does not prevent the enactment of gun restrictions for the public welfare. The exception was enacted into federal law in the Gun Control Act of 1968.

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Later state court cases upheld the statutes outlawing possession or ownership by felons against challenges under rights to keep and bear arms stated in state constitutions. In this regard, the experience of New Hampshire is instructive.[2] In 1978 a proposed constitutional amendment recognizing the right to keep and bear arms was put to the voters. The amendment, however, contained clauses permitting the state to regulate the manner of carrying weapons and excluding felons. It failed. In 1981 it was again put to a vote of the people, this time without the two clauses, and it passed.

In 1990, however, the New Hampshire Supreme Court upheld the state's statute prohibiting possession of firearms by felons against challenge under the New Hampshire right to keep and bear arms. Note the degree of respect afforded to the question of the rights of persons expressed in the heart of the court's argument in support of its decision:

> As the defendant concedes, the State constitutional right to bear arms is not absolute and may be subject to restriction and regulation. Assuming that the right to bear arms is no more absolute than the right of free speech . . . a restriction . . . may be sustained if it "narrowly serve[s] a significant government interest." . . . The government interest served by the statute, protection of human life and property, is patently significant. [Footnotes and references omitted.]

Thus the court upheld a man's conviction and the statute on the basis of a concession by the defendant (readily accepted by the court without citation to any authority) and an assumption! Actually, more than one assumption, for implicit in the court's statement that the felon exception serves "the protection of human life and property" is the belief that felons (despite the fact that numerous felonies are not violent crimes against persons) will likely commit crimes with guns. Such is the precedent, such is the intellectual rigor and concern, that establishes a permanent exception to a right. Consider, in this light, the notion that the courts are the guardians of our rights.

Can a convicted felon be denied his right to free speech or freedom of the press? Can he be denied the right to assemble or to the free exercise of his religion? May convicted felons be subject to unreasonable and warrantless searches and seizures? May they, on arrest for a subsequent crime, be denied due process of law and the right to trial by jury; and, when convicted, may they be subject to cruel and unusual punishment? Surely crime would plummet if these rights, too, were subject to a felon exception for the sake of public safety, and if the police could summarily execute felons they suspected of committing crimes. But if those rights must be respected, why is the right to keep and bear arms a *different* kind of right that admits of such an exception?

Majority Rule?

The problem is that an exception has been introduced to the right whose scope is defined by action of the majority (through legislative action and subsequently through a majority of a panel of judges). That is fatal to the right because it makes the right a captive of majority rule. The concept of "public safety" has no inherent limiting principle that establishes its outer boundaries. Those who have doubts need only consider the ever-expanding list of federal and state disqualifications for the ownership of arms. While the suggestion above regarding the summary execution of convicted felons seems outrageous, it does so not on grounds of public safety but only because of native concepts of justice which require that the individual is presumed innocent and must be proven guilty before being punished—concepts that rest, at bottom, on the inherent dignity of the individual. That we do not fully accord the same treatment to convicted felons, taking each individually, indicates only that we now base our treatment of one another not on the principles of justice established at common law, but on probabilistic assessments of predilections for guilty behavior. Now we punish people in advance because of what they *might* do, based on our assumptions about (and if the legislators are being especially careful, actual statistical evi-

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dence indicating) the predilections of *people like them*.

So first we may note that if a right in the Bill of Rights is subject to an exception whose scope is defined by action of the majority (the legislative process), the right has been rendered subject to the will of the majority. That is, it has ceased to exist and has become a creature of legislative grace.

This issue bears further examination, however, because so many gun owners readily concede that their right to keep and bear arms is "not absolute" and is subject to "reasonable" regulation. This concession to moderation or reasonableness is fatal to the right. Yes, there are people who should not have guns. However, the point of the Second Amendment is precisely to deny government the power to decide who those people are, just as the point of the First Amendment is to deny government the power to decide what you may read and hear. Rights are not reasonable, and are not to be made reasonable, because government itself is not reason; it is force.

If a right is subject to an exception, *any* exception, then the principle on which the exception is founded is, of necessity, superior to the right itself; else there is no exception. If the felon exception, or the prohibition of possession by those subject to restraining orders, those dishonorably discharged from the armed services, or those who are habitual users of marijuana (all current disqualifications under federal law), is justifiable because it is necessary or desirable to protect the public, then clearly the interest of "public safety" is *superior* to any individual's right to keep and bear arms. In sum, public safety trumps a "right" to keep and bear arms; since it is superior to the "right," it absolutely defines the scope of the "right."

But the concept of "public safety" has no inherent specific content that would impose a stopping point or define a boundary beyond which it does not extend. For example, if the legislature determined that an absolute prohibition against the private ownership or possession of arms would or could be expected to cause a reduction in the amount of crimes committed with guns, such a law would still have the purpose of securing "public health or safety," and thus be within the scope of the state's "police power." Yet obviously the "right" to keep and bear arms in this case would completely disappear. Thus an exception to the "right" on grounds of public safety logically destroys the "right."

The list of federal and state disqualifications for the ownership or possession of arms continues to expand, and Congress and the states have embarked on a new goal of keeping all guns out of certain hallowed locations (post offices and other government buildings, airports, and school zones), also in the interest of safety. This offers a partial proof that the concept of "public safety" has no logical stopping place.

Try to determine how far the government could go on grounds of public safety. For example, why is there an interest in public safety only in government buildings, airports, and school zones? Why not hospitals—indeed, all public property and all businesses open to the public? If you find a stopping place that leaves *any* private person with the right to keep and bear arms, explain why the concept of "public safety" indicates that you must stop *there* and not go any further.

The Purpose of Rights

Another way in which rights are often limited is to "interpret" them in light of the purpose they are supposed to achieve. For example, those who oppose the private ownership of arms sometimes assert that the purpose of the Second Amendment is related to the maintenance of militias. Since militias no longer exist and are a discredited and ineffectual means of securing the common defense in the modern world, the Second Amendment has been rendered obsolete and may therefore be ignored. Is this a legitimate way of imposing a limitation on the scope of a right, of rendering it *less* than absolute?

While the "interpretation" cited above is a misreading of both the words and history of the Second Amendment, the effect of interpreting a right by reference to its purpose is nonetheless revealed: it, too, leads to the destruction of the right!

An example involving a right that the

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Supreme Court actually pretends to recognize from time to time will perhaps be more convincing. The Supreme Court has discovered that the purpose of the Fourth Amendment is to protect people's "reasonable expectations of privacy," and so this has become the Court's standard for determining how far law enforcement can go in conducting searches and seizures. Because people's expectations of privacy vary in different circumstances, the Court has concluded that our Fourth Amendment rights similarly vary.

So, the law of the land now proclaims that your rights against search and seizure are stronger in your home than in your car. They are better if you own than if you rent and if you build a solid privacy fence around your yard than if you put up a chain-link fence. You have virtually no rights if surveyed from above; since anyone can see what you're doing from up there, you cannot possibly have a *reasonable* expectation of privacy. Your rights are stronger if you are a passenger in a car than if you are the driver. Personal papers are more protected than business records; you essentially have no rights in records of your phone calls or banking transactions. A different Fourth Amendment rule for every occasion!

The remarkable upshot of the Court's interpretation of the Fourth Amendment in light of its purpose is: never before has our government had so much power to search and seize your person, personal information, and property without probable cause and without a warrant. And yet never before has the purpose of the Fourth Amendment been so perfectly and fully achieved!

It is important to realize that the destruction of a right by "interpreting" it in accordance with its purpose does not occur merely because the interpreter picks the "wrong" purpose. It is a necessary consequence of the very process. To "interpret" a right in light of its purpose is to render the right a means to an end. This act immediately devalues and dethrones the right. In a relationship between means and end, the end, or goal, is always *superior* to the means. The means is only *a way* to achieve the goal. Primacy is accorded to the goal; if the means do not quite work, the means must be altered, if not abandoned, to achieve the goal.

By creating a relationship of means and end between a right and its purpose, we create a feedback loop in which the means is constantly re-evaluated and adjusted in light of the degree to which it is achieving the purpose. This process also has no logical stopping point and can also lead to the complete re-definition of the original chosen means (that is, the complete evisceration of the right). The Court's Fourth Amendment jurisprudence provides ample evidence and proof of this.

With the foregoing, then, I hope to have provided some basis for advancing the following claim: A right, to be a right, must be absolute, that is, subject to no exceptions, and held or respected as an end in itself, not as a means to some other end. Otherwise, it does not stand outside and above the law, but becomes subject to it, a mere creature of legislative action, majority rule, and the peripatetic opinions of judges. If the right is not absolute, you absolutely have no right. □

1. It is possible to argue that felons can be excluded because they are not one of "the people" referred to in the Second Amendment. This harkens back to the old sense of a felon as an "outcast" of society, which in turn relates to the historical fact that, in ancient times, persons who committed particularly egregious crimes were actually cast out of the city or community that protected them. Thus it would be consistent to argue that a person whose crime was so egregious as to warrant death or status as an outcast lost his right to arms with which to defend himself (that is, society has either decided he should die or does not care if he lives). This is a far cry from what a "felon" is now, however. Today a felony is simply any crime punishable by more than one year in prison, and includes such crimes as possessing a few too many ounces of marijuana.

2. What follows is drawn from Clayton E. Cramer, *For the Defense of Themselves and the State: The Original Intent and Judicial Interpretation of the Right to Keep and Bear Arms* (New York: Praeger, 1994), pp. 240–41.

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IDEAS ON LIBERTY
MAY 2001

Current Issues

Making Environmental Tradeoffs

Wealthy countries have it easy. Their citizens are richer. Their people enjoy healthier and safer environments. Yet Western nations are hindering Third World people from improving their lives—in the name of the environment.

Malaria is seen as a poor nation's disease, but it once afflicted today's industrialized states. Decades ago people in the United States and Europe suffered from this, one of history's most ravaging diseases. But malaria has essentially disappeared in the West.

Poor countries are not so lucky, however. Up to a half-billion people contract the disease every year; as many as 2.7 million die. It kills one in 20 children in sub-Saharan Africa. Harvard University's Jeffrey Sachs figures that this huge human toll in turn cuts economic growth rates in Africa in half.

The problem is not that people don't know how to combat malaria, which is caused by a mosquito-borne parasite. It's that they have not been using the best tool, dichlorodiphenyltrichloroethane—DDT.

Introduced in 1945, DDT's instant success led to a Nobel Prize for the scientist who discovered the pesticide's effectiveness. DDT is estimated by the World Health Organization to have saved some 50 million lives. The pesticide essentially wiped out malaria in America and Europe.

The benefit to poor nations was also enormous. For instance, after the introduction of DDT, malaria diminished dramatically in India, Sri Lanka, and Bangladesh.

In India, annual cases dropped from 100 million in 1935 to 300,000 in 1969. In Sri Lanka the number fell from 2.8 million 1948 to just 17 in 1963. Bangladesh was even declared to be malaria-free. Similar progress was evident in countries like South Africa. Although geography, logistics, and poverty make eradication difficult in Africa, DDT still made substantial progress possible.

Unfortunately, the pesticide was also used indiscriminately for agriculture. Although there is no persuasive scientific evidence that DDT harms humans, it did reduce the population of raptors and songbirds. Rachel Carson's *Silent Spring* helped generate pressure on the Environmental Protection Agency to ban DDT in the United States in 1972, despite the lack of evidence that it harms humans.

Most other industrialized states followed suit, discontinuing production of the insecticide. Moreover, through the United Nations Environmental Program they pressed Third World states to drop their use of DDT. For a time the World Wildlife Fund (WWF) and other environment groups pushed to eliminate DDT by 2007.

Poorer nations reacted in horror; reducing use of DDT proved to be a disaster. Sri Lanka stopped spraying DDT in 1964; the number of malaria cases skyrocketed to a half million in just five years. Instances in South Africa jumped tenfold over the last five years alone.

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Scientists came to DDT's defense. Former U.S. Navy Surgeon General Harold Koenig says that "DDT remains probably the most effective, affordable tool with which to fight malaria in the developing world."

Amir Attaran of Harvard University's Center for International Development says that with the treaty "environmentalists sought to promote an environmental goal at a calculated risk to human life." Such a prohibition is "going to kill people."

And it doesn't require a genius to figure out who will be dying. "Setting a firm deadline to ban DDT places an unethical burden on the world's poorest countries," argue more than 600 scientists in a letter circulated by the Malaria Foundation International.

Lauding Malaria

Yet some environmentalists have, weirdly, lauded malaria for having the unexpected benefit of discouraging agricultural development of "wild areas." Luckily, most are not so misanthropic.

Under pressure, the WWF retreated from its support for an absolute ban, claiming that it merely hoped to stimulate the resources necessary to allow poorer states to adopt alternative policies. But last August the group went so far as to support the principle "that human health is not compromised as reliance on DDT is reduced."

In early December 2000 international negotiators concluded a treaty banning Persistent Organic Pollutants (POPs)—a dozen toxins ranging from DDT to dioxins and PCBs. The accord put 11 on Annex A for elimination, and DDT on Annex B for restricted use. Countries must formally take advantage of the latter provision.

Opened for signature a year ago in Stockholm, the treaty requires 50 ratifications to take effect. Unfortunately, the regulatory strictures of the treaty may be sufficient to deter some poorer nations from using the chemical. Moreover, Greenpeace is seeking to close down India's DDT producer, one of only two in the world. That would further raise costs and reduce availability. Warns Attaran, environmentalists thus "may accomplish through the back door what they couldn't accomplish through the front door."

The political atmosphere surrounding the treaty also poses a problem. Despite their public protestations to the contrary, some leading environmentalists still seem committed to eliminating DDT. Both the WWF and Greenpeace emphasize that the treaty's most important purpose is to eliminate all POPs. The Pesticide Action Network and Physicians for Social Responsibility are also on the ban-wagon.

This indirect treaty pressure has been exacerbated by the aid policies of Western governments. According to Richard Tren and Roger Bate in a new study for the Competitive Enterprise Institute, Belize and Bolivia have dropped their use of DDT out of fear of losing foreign subsidies for public-health programs. Mozambique was discouraged from introducing it.

Explain Tren and Bate: "Mozambique is one of the world's poorest countries and has been struggling to rebuild its national infrastructure and economy after a civil war that lasted nearly 20 years. Due to these circumstances, the country is heavily reliant on donor funds for the provision of even the most basic services to its population."

Although 15 countries indicated their intention to utilize the treaty exemption and use DDT, another ten that probably should have joined them did not do so. Roger Bate worries that "they failed to do so because of pressure from international aid organizations."

Yet DDT should not be in the same category as the other 11 POPs, linked as they are to birth defects and other ailments. DDT's harms are far less severe. Its benefits are far greater.

As one South African official told the *Washington Post*: "We understand that if we don't take care of the air and the land and the water, it will kill us—but it will take 20, 30 years. Malaria will kill you tomorrow."

Moreover, while there are alternative pesticides—Cyfluthrinand Deltamethrin, for instance—they tend to be substantially more expensive. And since they are also used as agricultural pesticides, resistance to them is greater. As a result, they will save fewer lives.

In short, the campaign against DDT is misguided. □

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IDEAS ON LIBERTY
MAY 2001

Superheroes and the Fight for Liberty

by Raymond J. Keating

In recent times, popular culture has not exactly been a bastion of principled thought and philosophy, particularly when viewed from conservative or libertarian perspectives. Television, movies, and music, along with countless novels, have been infiltrated either by big-government leftism or a pervasive nihilism.

Is there a pop-culture genre that might be considered an exception? Well, I fondly remember the superhero comic books from my childhood that emphasized the importance of individualism, protecting the innocent, and standing up against all forms of tyranny.

Of course, so much in the comic-book industry has changed over the past 20 or 30 years. Most striking, few comic books are now written for young children. Specifically for our purposes, superhero comic books grew up a little, with story lines becoming a bit more complex in the late 1970s and into the 1980s. The publication of a few high-profile comics showed the industry moving away from simple pulp fiction just for kids.

For example, Marvel Comics probably broke the mold in the late 1970s with an installment in the X-Men series—"The Dark Phoenix Saga"—that saw a longtime hero, Jean Grey, corrupted by power and eventually dying. In 1986, DC Comics published "The Dark Knight Returns," which took an older Batman to a grander, but much darker level. In addition, DC's "The Watchmen" (1986–1987) told a sometimes explicit tale of a set of costumed adventurers who ranged from dysfunctional to psychotic.

By the 1990s, superhero comic books seemed to have given up on the younger market, gearing themselves to older teenagers and younger adults. The stories and, in particular, the artwork took a quantum leap higher. In 1994, Marvel Comics published a rather striking series called "Marvels." This tale was told from the perspective of a freelance news photographer, who offered the average man's view—his hopes and fears—while watching the feats of superheroes and supervillains over the years.

Many of these publications still presented a strong pro-individual, anti-tyranny message, except for "The Watchmen," which offered a far more muddled view of right, wrong, and mankind. For example, while the ultimate message in the X-Men "Dark Phoenix Saga" was taking responsibility for one's actions, "The Watchmen" arguably went directly against such a notion.

In recent assessments, conservatives seem split on the direction of comic books. In a 1994 *National Review* article, for example, Anthony Lejeune praised old-time comics, pointing out: "Political themes, as distinct from simple Americanism, were generally eschewed as being likely to divide than to

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attract readers." But he saw a drastic change in longer, grander comics known as "graphic novels": "What almost all of them have in common is that their vision is dark—like the new Batman—rather than bright, ugly rather than beautiful, bitter rather than optimistic, cruel rather than genial."

In contrast, in the *Weekly Standard* (1998), Mark Gauvreau Judge wrote that some people creating comics "are trying to explore the big questions. And they're doing it in books openly hostile to the moral relativism of modern liberalism." He concluded that "conservative moralists could do a lot worse than to follow the latest round of superheroes flying above the streets of Metropolis and Gotham."

The True Test

So, who's right? Well, for me, the true test of the current state of superheroes has to be gauged by my childhood favorite—Captain America. And with this "Sentinel of Liberty" having just reached his 60th anniversary, this is an ideal time to take a look. Captain America, the creation of Jack Kirby and Joe Simon, arrived on the comics scene in March 1941, less than a year before the United States entered World War II.

As the story goes, a scrawny kid named Steve Rogers volunteered for a secret experiment, which turned him into America's "super soldier." In the 1940s, Rogers—Captain America—appeared in simple, patriotic stories fighting against Nazi spies and saboteurs, along with a few murder mysteries and horror tales tossed in along the way.

Soon, however, the popularity of superhero comic books declined for a period. Captain America remained in suspended animation from the late 1940s until he was thawed out in the early 1960s, except for a brief resurrection in the 1950s carrying the tantalizing Cold War title "Captain America . . . Commie Smasher."

In the '60s, Captain America stories remained geared primarily toward youths. The anti-tyranny message was a constant. "Cap" not only battled supervillains bent on world domination, but also fought against communists, bigotry, and various evildoers trying to resurrect the Third Reich. Along the way, lessons like not taking liberty for granted and the importance of protecting human life were emphasized.

Eventually, some of the uncertainty about the United States that emerged in the 1960s and 1970s even caught up with Captain America. At the time of Watergate and its aftermath, for example, Steve Rogers briefly became disillusioned and set aside his identity as Captain America to become a new hero called Nomad. Could the contrast in names be more acute?

By the time the nation's bicentennial rolled around in 1976, however, Captain America was back and growing more confident. At this time, Cap would foil a conspiracy to overthrow democracy and destroy the Declaration of Independence, and later take on villains whose cause was pure nihilism. As the decade came to a close, Captain America's link to World War II also would serve as a way to provide a reminder about the atrocities of the Nazi government, with one issue serving up a poignant reminder of the concentration camps.

Captain America in the 1980s touched on a variety of topics, including the question of vigilantism (always a biggie in superhero comic books), prison reform, taking responsibility for one's actions, pacifism, nationalism versus one-worldism, the lack of freedom in the Soviet Union, and of course, terrorism.

One story line had a hero from an alternate universe asking for help to fight a new tyranny on his Earth. The loss of democracy and individual freedom occurred for interesting reasons: With the idea of creating a Utopia, a superhero team first helps people in distress, then disarms the populace, and finally resorts to mind control to keep presumed undesirables in line. The underlying importance of the Second Amendment could not be missed.

Another '80s story line carried a distinct antibureaucrat message, as a rogue government commission strips Steve Rogers of his Captain America identity for being too independent. The pursuit of Captain America by this commission, it is worth noting, was triggered by an IRS auditor.

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Cap versus the Feminist

Since 1990 Captain America has continued to touch on a variety of social and philosophical topics. One amusing story line had Cap taking on a militant, man-hating superpowered feminist. Others provided sound warnings about abusing individuals in the pursuit of some elusive Utopia. A particularly noteworthy recent story featured Captain America battling a "galactic totalitarianism," whereby an all-powerful being in the future eliminated worry, hunger, need, crime, and violence, but at a daunting price—the loss of free will and independent thought.

In the end, the critics who say that comic books have become far too dark have an abundance of material to back up their claims. Others who see some great issues and interesting stories being played out have examples to point to as well.

For better or worse, since the writers of Captain America (and other comic books, for that matter) inevitably change over the years, there comes a difference in style and emphasis. Nonetheless, after now having caught up with one of my childhood favorites, I can say that, to the credit of Marvel Comics, while usually being general, there has been a fairly constant, favorable emphasis in the pages of Captain America on individualism and freedom, personal responsibility, protecting human life, the opportunity to chase the American Dream, and the need to fight tyranny.

For good measure, Captain America places great emphasis on hard work. As a superhero without special super powers, he has to be a disciplined, hard worker to keep up with both allies and foes endowed with fantastic abilities. In a recent story, Captain America proclaims that "America is about making your own way. America can give you the chance. But it's up to you to work hard and do something with the opportunity."

On the rare occasions when specific economic issues have come into play, however, it must be said that the writers of Captain America seem to suffer from the same lack of knowledge regarding our free enterprise system that permeates the rest of popular culture. While in the early 1960s one tale involving Captain America was distinctly anti-communist and pro-capitalist, in more recent times, a rather silly economic populism seems to pop up now and then. For example, a few odd slaps were taken at the advertising business in the 1980s, and more recently, prison privatization was portrayed in a bad light, with an anti–big-corporation message detected on another occasion.

It certainly would be nice if the Captain America character, who speaks so often about opportunity and the American Dream, would occasionally note the critical role played by free enterprise. After all, freedom and opportunity are mere myths or platitudes if one does not recognize the importance of private property and free markets.

Like the rest of pop culture, comic books are first and foremost escapist fun. However, various philosophical or cultural ideas inevitably are touched on to some limited degree. The positive emphasis on individual freedom and responsibility is enough to classify Captain America as recommended pop-culture reading. All Cap needs is a quick lesson in the wonders of sound economics. □

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IDEAS ON LIBERTY
MAY 2001

The Post Office as a Violation of Constitutional Rights

by Wendy McElroy

In September 2000, the United States Postal Service (USPS) launched a $12 million campaign to advertise a new Internet service, eBillPay, through which customers could pay their bills electronically. EBillPay is one of several new e-services designed to woo back the growing army of Americans who would rather click a mouse than lick a stamp to send mail. After a free introductory period, eBillPay customers will be charged $6 a month for up to 20 payments with a 40-cent additional charge per payment thereafter. (See www.usps.gov/ebpp/welcome.htm.) Although the USPS rate is comparable to that of similar private services, such as Paytrust and Billpay, it hardly competes with the many banks that offer such e-services to their customers for free. For their part, private services cannot compete with a postal behemoth that is financed through legal privilege in the marketplace, with a governmental net for shortfalls in revenue.

As Flint A. Lane, president of Paytrust commented, as a taxpayer, "I'm paying for advertising . . . for a competitor of mine." Concerns are already being raised about whether the USPS will attempt to gain a position of legal privilege over certain e-services just as it asserts a monopoly over first-class mail.

The USPS is a government monopoly accustomed to operating at public expense. Although the USPS currently receives no direct cash transfers from the government, it is exempt from taxation and can borrow from the Treasury. Many people consider the main cost to be the inefficiency and expense wrought by the absence of competition. To such people, the Postal Service is a relatively benevolent expression of government, offering a vital service that would otherwise not exist on the free market.

The history of the USPS suggests something different, however. It chronicles centuries of civil-rights violations that began at the very birth of a national postal system and that have nothing to do with providing a service. Rather, the USPS promoted and protected the interests of those in power. In asserting the monopoly that allows it to do so, it has been indifferent or hostile to providing the best service at the lowest price. An infamous case of this hostility occurred in 1845, when private mail companies operated with relative freedom, including carrying first-class mail. One such venture was the American Letter Mail Company that had been established by the noted libertarian legal theorist Lysander Spooner. In his periodical *Liberty* (May 28, 1887), Benjamin Tucker described the situation that confronted his mentor: "In 1844, he [Spooner] started a private mail between Boston and New York, and soon extended it to Philadelphia and Baltimore, charging but five cents a letter between any of these points—a very much smaller sum than the government

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was then charging. The business was an immediate success and rapidly extending."

Then, in 1845, in response to the fiscal threat posed by private companies, a congressional act imposed draconian fines on private carriers who dared to offer better service at lower rates. Tucker explained, "as the carrying of each letter constituted a separate offence, the government was able to shower prosecutions on him [Spooner] and crush him in a few months by loading him with legal expenses."

Spooner had been so effective in demonstrating the superiority of private mail, however, that the post office was virtually compelled to lower its rates significantly thereafter. Thus Tucker dubbed him "the father of cheap postage in America."

In his pamphlet, "The Unconstitutionality of the Laws of Congress Prohibiting Private Mails," Spooner highlighted the inefficiency guaranteed by the act of banning competition in postal service. Once there was an enforced monopoly, he stated, postal officials would "feel few quickening impulses to labor" or "to move at the speed that commercial interests require." The consequence would be "a cumbrous, clumsy, expensive and dilatory government system" that would be "nearly impossible to modify or materially improve" except by opening it up once more to "rivalry and free competition."

But Spooner objected to a postal monopoly not merely or primarily because it cheated the public by requiring an extravagant fee for an inadequate service. His main objection lay in the argument that the monopoly violated individual and constitutional rights in at least three ways. First, Article I, Section 8, of the Constitution authorized Congress "to establish post offices and post roads," but it didn't bar others from doing so as well. The power to create was not a power to prohibit. The Ninth Amendment states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Second, freedom of the press included—and, indeed, required—the right to privately distribute material to whoever wished to read it. A government postal monopoly would be able to ban periodicals from using virtually the only legal channels of distribution. This control constituted a direct affront to the First Amendment.

Third, a monopoly post office that can control the flow of information inevitably would be used to political advantage by those in authority. In "Private Mails," Spooner argued, "Its immense patronage and power, used, as they always will be, corruptly, make it [the monopoly post office] also a very great political evil." Tucker concurred and added that the reduction in rates that followed Spooner's legal persecution had been a "sop" thrown to the public to keep them from calling for abolition of the monopoly.

Beyond the Superficial

Thus in viewing the current USPS, Spooner's criticism would go far beyond superficial facts, such as the 4.6 percent increase in postage that went into effect in January. Certainly he would have pointed to the folly of propping up a government service with an expected fiscal loss of more than a billion dollars in 2001 when private companies are eager to compete. But he would have emphasized the civil-rights abuses—for example, the USPS's obligation to share information with police and other law-enforcement agencies.

Consider Spooner's claim that a postal monopoly constitutes a standing threat to freedom of the press and freedom of speech. This observation did not originate with Spooner. In colonial America the founding fathers were acutely aware of the censorious role that British control of the post office played. Sam Adams urged the creation of a parallel and private system so that information could flow freely from colony to colony and so establish political cohesion. He insisted that the colonial post office deceived the people into believing it was a public utility when its real purpose was to stop "the Channels of publick Intelligence and" aid "the measures of Tyranny."

It was no coincidence that one of the first resolutions passed by the Second Continental Congress led directly to establishing the Constitutional Post as a reliable means of spread-

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ing information. Article IX of the Articles of Confederation (1781) granted the "United States in Congress" "the sole and exclusive right and power of . . . establishing or regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of said office." An ordinance established the working rules of the post office, including a provision for licensing post riders to carry newspapers.

But reliability of delivery would not be the only goal of the new postal service. In 1785, a resolution authorized the secretary of the Department of Foreign Affairs to open and inspect any mail that related to the safety and interests of the United States. The ensuing "inspections" caused prominent men, such as George Washington, to complain of mail tampering. According to *Unmailable: Congress and the Post Office* by Dorothy Ganfield Fowler, the Continental Congress was soon debating whether some communications should be deemed "unmailable" because their content was too dangerous.[1]

In practical terms, certain types of political expression were already experiencing problems with mailability. After the Constitution was drafted, it was sent to the states for ratification. During the bitter political debates, an ideological war broke out between the Federalists (who were pro-ratification) and the Anti-Federalists (who were anti-ratification). The Federalists dominated in the cities through which mail flowed. As a result, Anti-Federalists' communications seemed to disappear or be strangely delayed. The Federalist Postmaster General Ebenezer Hazard came under particular attack for allegedly stopping the flow of Anti-Federalist information, especially between newspapers in different states that were eager to reprint one another's articles. Under the penname "Centinel," an Anti-Federalist wrote, "Attempts to prevent discussion by shackling the press ought to be a signal of alarm to freemen." He continued, "every avenue to information is so far as possible cut off, the usual communication between the states through the medium of the press, is in a great measure destroyed by a new arrangement at the Post Office, scarcely a newspaper is suffered to pass by this conveyance."

In 1797, with the new Constitution in force, Congress enacted the first law limiting what could be mailed. It was a modest prohibition against newspapers with wet print being posted because they tended to damage accompanying mail. But the definition of "unmailable" soon acquired political meaning.

In Andrew Jackson's first annual message to Congress as President (1829), he declared of the Post Office: "In a political point of view this Department is chiefly important as affording the means of diffusing knowledge. . . . Through its agency we have secured to ourselves the full enjoyment of the blessings of a free press."[2] By 1835, however, Jackson's address to Congress struck a different note concerning the post office and freedom of the press. Antislavery dissension was already apparent and contributing to the tensions that would eventually lead to civil war. Some Southern politicians and postmasters called for a ban of seditious literature—namely, antislavery literature—from the mails. Jackson recommended that Congress pass a law to allow the prohibition. A bill attempting to do so was defeated in the Senate on its third reading by a vote of 19 to 25. On a federal level, antislavery material was deemed "mailable." On the state level, however, various Southern legislatures passed resolutions to restrict its circulation. Thus some Southern postmasters were placed in the position of having to break state laws restricting antislavery literature if they wished to obey a federal order to circulate it.

Controlling Public Morality

The censorship exercised by the post office —sometimes officially, sometimes unofficially—was not merely aimed at quashing political dissent and supporting political authority. Often the postal muscle was flexed to control public morality and to prevent social reform.

In 1874 second-class postal rates were granted to newspapers and magazines that met four requirements. They had to: issue at regular intervals of no less than four times

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annually; state the place of publication; have subscribers; and disseminate "information of a public character, or [be] devoted to literature, the sciences, or some special industry."

The last requirement would be used as a basis for granting low rates to desirable mail and denying it to the undesirable. A year before, the Comstock Act of 1873 had provided a penalty of up to ten years' imprisonment for intentionally mailing obscene material. Ominously, "obscene" had not been defined. But Anthony Comstock, a moving force behind censorship in late nineteenth-century America, had acquired broad power to interpret the Act named for him. He defined obscenity in such a manner as to include birth-control information and discussion of sexual issues, such as whether forced sex within marriage was rape.

Thus the post office exercised tremendous power over freedom of the press and the public expression of sexual morality. Birth-control information was especially targeted by two of the most infamous state persecutions in libertarian history. In 1877, Ezra Heywood, editor and publisher of *The Word*, was arrested for distributing a birth-control pamphlet titled "Cupid's Yokes," which advocated the abolition of marriage and contained a scathing personal denunciation of Comstock. Heywood was fined and received a two-year prison sentence but—under extreme public pressure, including a petition reportedly signed by 70,000 people—President Rutherford B. Hayes pardoned Heywood.

Undaunted, Comstock successfully arrested others who distributed the pamphlet and continued to persecute the editor for years thereafter. In 1890 Heywood was once again found guilty of mailing obscene material to subscribers and received two years at hard labor, which he served in full.

In 1887, the editor and publisher of *Lucifer the Light Bearer*, Moses Harman, was arrested for publication of a letter that identified forced sex within marriage as rape. The grand jury indicted *Lucifer* on 270 counts of obscenity under the Comstock Act; the charges were eventually discarded. Not to be thwarted, the district attorney procured a new set of indictments, 216 counts in all. Due to public controversy, however, the case was continued over until 1890, when Harman was finally sentenced to five years' imprisonment, then released on a technicality. In January 1891 Harman was sentenced to one-year imprisonment on another obscenity charge, with another writ of error ensuing. The legal persecution continued for years.

Postal harassment preceded Harman's final arrest in 1896. *Lucifer* had been denied the use of second-class mail rates until the matter had been successfully appealed to the authorities in Washington. Even then, the Chicago post office—the city in question—confiscated and destroyed individual issues that it independently declared "obscene." One issue was destroyed because it contained an article by the venerated feminist Alice Stone Blackwell, which had been reprinted from the conservative *Woman's Journal*.

Finally, at age 75 Harman was sentenced to and served one year at hard labor. From Cook County jail in Chicago, Harman had explained that the cause of his persecution had been *Lucifer*'s mission "to help woman to break the chains that for ages have bound her to the rack of man-made law, spiritual, economic, industrial, social and especially sexual, believing that until woman is roused to a sense of her own responsibility on all lines of human endeavor, and especially on lines of her special field, that of reproduction of the race, there will be little if any real advancement toward a higher and truer civilization." It was in reference to Harman's imprisonment under the U.S. postal laws that the British playwright George Bernard Shaw coined the term "Comstockery."

The post office routinely used repressive tactics against socialist and labor periodicals in the late nineteenth and early twentieth century to control the flow of radical information. Such Comstockery continued past World War II as a policy of the Cold War. On October 11, 1962, for example, the Cunningham Amendment—designed to restrict the circulation of communist literature that originated in a foreign country—became law. On a less official basis, the Post Office Department began to keep a list of everyone who received the questionable mail. In 1965, the Supreme Court

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ruled that the Cunningham Amendment was unconstitutional because it limited the First Amendment rights of the addressees.

Over and over again, the goals of the USPS have come into conflict with the First Amendment that assures freedom of the press and speech. Civil libertarians demand to know whether freedom of speech extends to privately written words in letters as well as to public written words in newspapers. And if not, why not?

Arguably, the USPS has also violated the Fourth Amendment, which guarantees the right of people to be secure against unreasonable search and seizure. The postal prerogative to open and examine letters raises this question. If the USPS did not have the privileges of a legal monopoly, it could not enforce policies that violated the rights of its customers.

A recent attempt by the USPS to maintain its monopoly control was embodied in Postal Bulletin 21994 (March 1999). The bulletin targeted one of the USPS's major competitors—private mailbox providers that serve millions of people, especially people with small businesses or who wish to preserve their privacy. The bulletin orders mailbox providers to have each customer fill out a new form requiring two types of identification and various other personal data. For example, the form for businesses requires the home addresses of officers and directors. The bulletin also states that if a business deals "with the public," anyone walking in off the street has a legal right to view the business's data.

Material addressed to a private mailbox is required to have the acronym "PMB" (Private Mail Box) on a separate line preceding the box number itself. The bulletin's stated purpose is to reduce mail scams, but the USPS either could not or would not provide data linking private mailboxes to fraud. Jere Glover, chief counsel of the Office of Advocacy of the Small Business Administration (SBA), insisted, "There is no indication that using a "#" or "PMB" in an address will in any way deter fraud." The Office of Advocacy has asked the Justice Department to review the rule, which is scheduled to go into effect August 26, 2001.

The USPS never mentions two of the main impacts of this measure. First, it provides the government with the names and addresses of every individual and business who rents a private box. Individuals to whom privacy is critical—for example, women living apart from abusive, violent spouses—will no longer trust the confidentiality of private mailbox providers. (Although the USPS promises confidentiality, the mailbox companies advise people not to use credit cards as the recorded identification.)

Second, many small businesses are discouraged from using private mailboxes with a designation—PMB—that stigmatized them as "second class" (non-storefront) ventures. Thus another competitor of the USPS is placed at a disadvantage in the marketplace. (For more on this issue, see PostalWatch, www.postalwatch.com, a not-for-profit organization that alerts the private sector to intrusions by the USPS.)

Those who argue that the worst sins of the USPS are its inefficiency and high cost may be overlooking the possibility that an efficient and cheap mail service is not its primary function. If it were, the USPS would have relinquished the function to the private sector long ago. Its primary political purpose is to control the flow of information by defining what is "unmailable." During periods of war, that purpose emerges openly. For example, "un-American political doctrines" were declared unmailable during World War I. Broadly defined "subversive propaganda" received similar treatment during World War II. Enforcing those prohibitions required widespread interception, monitoring, and censorship of private correspondence. It required monopoly.

The question posed by Spooner over a century and a half ago remains unanswered: from which passage of the Constitution can Congress claim this right? □

1. Dorothy Ganfield Fowler, *Unmailable: Congress and the Post Office* (Athens, Ga.: University of Georgia Press, 1977).
2. Fowler, pp. 21–22.

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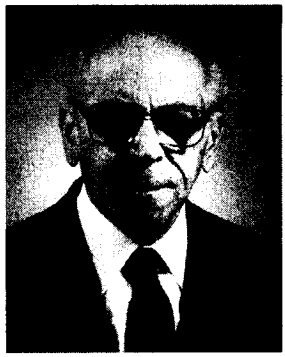

Kevorkian, Lies, and Suicide

Jack Kevorkian became famous allegedly for helping persons commit suicide. His supporters continue to hail him as the person who put physician-assisted suicide on the political map of America. This is a false image created by Kevorkian and the media. Webster's Dictionary defines suicide as "an act or an instance of taking one's own life voluntarily and intentionally." Strictly speaking, then, assisted suicide is an oxymoron.

This does not mean that one person may not help another kill himself by furnishing him the means to do so, for example, by selling him a rope, a gun, or a drug. We do not regard gun shop owners or pharmacists as practicing suicide assistance, and do not call killing oneself by means of these tools "assisted suicide." Similarly, we do not regard persons with access to lethal drugs who kill themselves with them, such as health-care personnel, as having committed "pharmaceutical company-assisted suicide." However, we regard persons who lack access to lethal drugs but kill themselves with such drugs made available to them by doctors as having committed "physician-assisted suicide."

The so-called problem of physician-assisted suicide thus comes down to a simple question: Why do people need the help of doctors to kill themselves with drugs? The answer is obvious: Because the trade in drugs useful for killing oneself is illegal, and anyone interested in terminating his own life with a drug needs a doctor to supply it.

Misleadingly, Kevorkian's subjects were called "patients." However, Kevorkian had no license to practice medicine and the people he "helped" did not come to him to be diagnosed or treated. His clients traveled, sometimes thousands of miles, to secure his services. If they could do that, they could have killed themselves by other means, for example by architect-assisted suicide, a.k.a. as jumping off a tall building. They came to Kevorkian, then, either to obtain lethal drugs to which they had no access but Kevorkian did, albeit illegally; or they came to die by Kevorkian's hands rather than their own, anxious to depict medical killing as "therapy." Kevorkian was eager to oblige, portraying himself as a heroic fighter for a right to suicide.

"Medicide" and the "Mercitron"

In his book, *Prescription: Medicide*, Kevorkian stated that his "ultimate aim [is] not simply to help suffering or doomed persons to kill themselves—that is merely . . . [a] distasteful professional obligation (now called medicide). . . . What I find most satisfying is the prospect of making possible the performance of invaluable experiments or other beneficial acts." (The term "medicide" is typical Kevorkian: as germicide means killing germs, so medicide means, or ought to mean, killing medicine or killing doctors.) Explained Kevorkian:

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> [N]o longer is there a need—or even an excuse—for anyone to be the direct mediator of the death of another who is alert, rational, and who for some compelling reason chooses to, or must, die. Performance of that repulsive task should now be relegated exclusively to a device like the Mercitron, which the doomed subject must activate. . . . [M]edicide has now been eliminated as an ethical problem for the medical profession. . . . The device's impact on morality extends to execution chambers as well. . . . Only by using the Mercitron . . . [can] the execution be made even more humane. . . . The Mercitron can diffuse it [moral guilt] even more by eliminating entirely the need for anyone to inject anything.

To eliminate the person as a moral agent responsible for his act, the psychiatrist attributes suicide to mental illness. Similarly, to eliminate both the physician who kills and the subject who allows himself to be killed as moral agents responsible for their actions, Kevorkian attributes killing "doomed persons" to a machine he calls the Mercitron. Who makes and operates it? Kevorkian. He gets credit for his great discovery. No one is blamed for the deaths "it" causes.

Kevorkian on Suicide

The word "suicide" refers to voluntary (noncoerced) self-killing. Kevorkian uses it to denote killings of all sorts, for example, the killing "of fetuses, infants, minor children, and every human being incapable of giving direct informed consent." Abortion, infanticide, and judicially authorized execution are, in Kevorkian's vocabulary, all instances of "suicide." Satisfied with that classification, Kevorkian concluded: "The above list of categories encompasses all potential candidates for the humane killing known as euthanasia, by others or the self."

To the press and the public, Kevorkian represented his activities as a medical obligation, imposed on him by his conscience and medical degree. But Josef Goebbels knew better, and was more honest, when he said, "We speak not in order to say something, but in order to obtain a particular effect." So Kevorkian, when asked in court, "have you ever wanted a patient to die?," replied, under oath: "Never." Calling the prosecutor "a lying psychotic," Kevorkian denied that "he has ever assisted in a suicide." Finally, to prove his sincerity, he threatened that, if convicted, he would starve himself to death: "I know they are going to force-feed me . . . and I'm not going to go along with it." Kevorkian's lawyer, David Gorosh, said his client will ultimately be "lauded as a hero in history."

To make himself appear a medical savior, Kevorkian falsely diagnosed his "patients" as dying. To make himself a medical martyr, he falsely promised to die for his cause.

Eventually, Kevorkian's luck ran out and he was sent to prison for his crimes to which he appears to have been driven by his megalomaniacal vanity. Has he killed himself by self-starvation, as he promised he would? No. Either he has changed his mind or he never meant what he said. If he changed his mind, he has availed himself of precisely that option which he denied his victims. And if he never meant what he said, then he has demonstrated the fatal unreliability of his diagnoses concerning his "patients' " alleged terminal illnesses.

Kevorkian spends his time in jail seeking freedom by filing appeals. His lawyer claims that Kevorkian "suffers from high blood pressure, always wears a sweater because he's cold, and looks like a skeleton." Kevorkian wore a sweater and looked like a skeleton before he entered prison and, from all we know, had high blood pressure as well.

"Liberty," declared Lord Acton, "is the prevention of control by others." Either the state controls the means for suicide and thus deprives persons of a fundamental right to self-determination, or we control it and assume responsibility for the manner of our own death. Giving physician-agents of the state the power to prevent suicide by psychiatric coercion and to provide "suicide" by medical prescription does not enhance patient autonomy, as its advocates claim. It enhances the prestige and power of the Therapeutic State and its bureaucratic agents. □

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The Pledge versus the Oath

by Jim Peron

When George W. Bush became president last January, he struck a familiar pose. Raising his right hand before the Chief Justice of the Supreme Court, he swore to "preserve, protect, and defend the Constitution of the United States." The oath serves to remind us that the United States is a constitutional republic with a federal system. The oath also reminds us that the Constitution is the cornerstone of the American system. The government is supposed to be bound by the Constitution. As such, government is not omnipotent but strictly limited to the functions and purposes enumerated in the Constitution. Legislation, regardless of how popular, is supposed to be consistent with it, and any laws that conflict with it are invalid.

Behind the Constitution are specific principles that America's Founders consciously held and promoted. Thomas Jefferson's Declaration of Independence is, for all practical purposes, the birth certificate of the United States. In it Jefferson outlined the principles of the Founders. These principles have a long and honorable history. (See my article "The Declaration of Independence: It's Greek to Me," *Ideas on Liberty*, August 2000.) But the Founders realized that it was impractical, and unnecessary, to expect the American people to understand that history and philosophy. The Declaration and the Constitution were all that Americans needed to understand. If the people were loyal to the Constitution, then the Republic was safe.

Of course there have been individuals who were opposed to the Founders' philosophy and opposed to a constitutional republic with limited powers. Almost from the beginning there were individuals who promoted a government of unlimited powers. They wanted the people to express their loyalty, not to the Constitution, but to the state.

The differences between the two ideologies is striking. If one swears an oath to the Constitution it implies limited government by definition. It also implies that individual rights are paramount in the American system of governance. But when one swears to support the government instead of the Constitution, those principles disappear.

Imagine if our elected officials, instead of swearing to uphold the Constitution, simply swore to support the government! At this point nothing the government does could be consistently challenged. There would be no limitations on the state or on its functions. Individual rights would be nonexistent. The entire philosophy of the Founders would be turned inside out. If one supports the Constitution, then individual rights are the foundation on which the enumerated powers of the government are based. If one, instead, swears allegiance to the government, then *it* is the foundation on which specific enumerated

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rights are granted. The first system supports a concept of natural rights that reside in the individual. The second is one of legal positivism, which says that rights are whatever the state grants.

The Founders wanted a government where the rights of the people come first. The function of government is simply to protect those pre-existing rights. Statism argues just the opposite. For the statist the government comes first and rights are privileges granted at the whim of the state. These two philosophies could not be further apart.

If we were to place in order the structure of the American system it would be:

The people and their natural rights. Individuals are endowed with certain rights that are theirs by nature. These include the rights to life, liberty, and justly acquired property.

The Declaration of Independence. This manifesto set out the basic beliefs of America's Founders regarding rights and the nature of government.

The Constitution of the United States. This document, based on the principles clearly enunciated in the Declaration, established the method of proper government. It was not intended to explain the philosophy of government but only outline how it should operate. Powers were strictly enumerated while rights were not.

The Republic. The end result of all of this would be the American Republic itself.

The president-elect and our elected officials do not swear an oath to the Republic but to the Constitution. The Constitution is the cause, the Republic the effect. If the Constitution is ignored, then the Republic is lost. Support for the Republic that does not include fidelity to the Constitution leads to a loss of both the process and the outcome.

Pledge of Allegiance

Why is it, then, that so many American schoolchildren are required to swear allegiance to the flag and the Republic "for which it stands" rather than the Constitution? Millions of children start each school day with the Pledge of Allegiance: "I pledge allegiance to the flag of the United States of America, and to the Republic, for which it stands, one nation under God, indivisible, with liberty and justice for all." Wouldn't we be much safer as a Republic if the children learned to respect the Constitution? If we were to place the flag in the hierarchy above, it would follow the Republic. The flag is a symbol of the Republic. It seems odd to pledge allegiance to the flag and to the Republic while ignoring both the Declaration and the Constitution.

To understand why this reversal took place we need to look at the history of the Pledge of Allegiance itself. Most of us grew up with the Pledge, and we probably assumed that it was always part of the American culture. But that is not true. Even the current version is relatively new. The phrase "under God" was not in the original version; it was added only in 1954. The Pledge itself doesn't go back farther than the 1890s. It's a child of the socialist Progressive movement.

It was during the late 1800s that, for the first time, widespread advocacy of socialism and statism became popular in the United States. Numerous authors wrote novels promoting these doctrines. Among those novels were Ignatius Donnelly's *Caesar's Column* and Edward Bellamy's *Looking Backward.* Bellamy wrote of a futuristic America where socialism reigned. In its first year of publication, 1888, the book sold 100,000 copies and eventually topped a million in print; it was translated into 20 languages. As a work of American fiction it was surpassed in the nineteenth century only by *Uncle Tom's Cabin* and *Ben Hur.*

John Dewey, the great advocate of government schooling and a socialist, called Bellamy his "Great American Prophet" and said: "What Uncle Tom's Cabin was to the anti-slavery movement Bellamy's book may well be to the shaping of popular opinion for a new social order." In fact Dewey took many of his socialist ideas for education and indoctrination from Bellamy. Historian John Baer said that Dewey "was ready to advocate Edward Bellamy's type of education and to reform American society through 'progressive education.'" Dewey was keenly interested in the Soviet Union and wrote articles praising

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the educational system imposed by the communists. (The material from Baer comes from his book *The Pledge of Allegiance: A Centennial History, 1892–1992.* See www.vineyard.net/vineyard/history/pdgech0.htm.)

In *Looking Backward* the main character, Julian West, falls asleep in 1887 only to awaken in the year 2000. He finds an America where the means of production are owned by the state and everyone earns equal income. Jobs are assigned by the government to citizen-conscripts, who must work for the state from the age of 21 until retirement at 45.

Edward Bellamy, along with his cousin Francis Bellamy, were the two major spokesmen for what they called "Nationalism," by which they meant the nationalization of all industry under state control. Across America some 167 Nationalist Clubs were formed. In 1889 one of the Boston Nationalist Clubs formed an auxiliary called the Society for Christian Socialists. According to Baer, "The principles [of the Society] stated that economic rights and powers were gifts of God, not for the receiver's use only, but for the benefit of all. All social, political and industrial relations should be based on the Fatherhood of God and the Brotherhood of Man, in the spirit of the teachings of Jesus Christ. Capitalism was not based on Christian love but on selfish individualism."

Francis Bellamy became the vice president in charge of education for the Society. Other prominent members included Francis Willard, the leader of the Women's Christian Temperance Union, and W.D.P. Bliss, a well-known minister.

The Bellamy cousins came from a long line of Baptist clergymen. Their grandfather had been a top aide to "The Great Awakening" evangelist Jonathan Edwards. Francis Bellamy was a seminary graduate and an ordained Baptist minister who openly preached socialism from the pulpit. But this led to conflicts with his congregation. One member, however, was enthusiastic about Bellamy's socialist principles: Daniel Ford, editor of the religious publication *The Youth's Companion*. Ford also was founder of Boston's famed Ford Hall Forum.

Loyalty to the State

After Bellamy was relieved of his ministry, Ford offered him a position with his magazine. Together they continued to work with various advocates of socialism and decided that a program was needed to teach American youth loyalty to the state. They realized that the individualist tradition in America did not lend itself easily to the "patriotism" needed for the socialist state of *Looking Backward.*

Ford and Bellamy contacted the National Education Association (NEA), which was then headed by William Torrey Harris. Harris, according to Baer, "believed in a state controlled public education system. As the leading Hegelian philosopher in the United States he believed that the State had a central role in society. He believed youth should be trained in loyalty to the State and the public school was the institution to plant fervent loyalty and patriotism. Like many other American educators of his time, he admired and copied the Prussian educational system."

A staunch opponent of private education, Harris wanted public education centralized in every way possible and used his influence to work toward that goal. He was unhappy that local education made it difficult to exploit the schools to indoctrinate children into accepting their proper role in society. His goal was shared by the Nationalist Clubs. The Lynn, Massachusetts, club persuaded the state legislature to require attendance at school until 15 years of age and to increase the school year from 20 to 35 weeks. John Taylor Gatto, an outspoken critic of government education, notes that Harris was one of the main proponents of using government schooling to indoctrinate and not educate. Gatto, in a speech on education, "Confederacy of Dunces: The Tyranny of Compulsory Education," quotes Harris: "Ninety-nine [students] out of a hundred are automata, careful to walk in prescribed paths, careful to follow the prescribed custom." Gatto continues: "This is not an accident, Harris explains, but the 'result of substantial education, which, scientifically defined, is the subsumption of the individual.' "

It is obvious why Harris was happy to join Bellamy's crusade. In 1892 Harris got the

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NEA to support a National Public School Celebration, which would promote loyalty to both the state and its schools. It was decided that they would promote an agenda written by *The Youth's Companion*. The NEA asked Bellamy to be the chairman of the celebration. At the main event he gave a speech that showed the importance of public education in the task of political indoctrination. He told the audience, "the training of citizens in the common knowledge and the common duties of citizenship belongs irrevocably to the State." Bellamy, like his cousin, wanted to use government schools to help promote a socialist agenda. He felt that one way of encouraging this agenda would be the teaching of state loyalty. To this end he wrote a pledge, which students across the country were asked to take. With a few minor changes this pledge is what is now called the Pledge of Allegiance. (According to *Black's Law Dictionary,* "allegiance" is an "Obligation of fidelity and obedience to government in consideration for protection that government gives.")

Bellamy attempted to accomplish several goals with his Pledge of Allegiance. He saw it as a means of inculcating support for a centralized national government over the federalist system of the Founding Fathers. He was particularly troubled by the idea that the individual states formed the federal government, fearing that secession from the union might be seen as legitimate after all. He kept in mind the "Oath of Allegiance," which was forced on the South after the Civil War. Baer quotes Bellamy as saying: "The true reason for allegiance to the Flag is the 'republic for which it stands.' . . . And what does that vast thing, the Republic, mean? It is the concise political word for the Nation—the One Nation which the Civil War was fought to prove. To make that One Nation idea clear, we must specify that it is indivisible, as Webster and Lincoln used to repeat in their great speeches."

Ford's *Youth's Companion* first published Bellamy's Pledge on September 8, 1892, in its original format: "I pledge allegiance to my Flag and the Republic for which it stands, one nation, indivisible, with liberty and justice for all." Bellamy's widow said he lamented that he couldn't use the motto of the French Revolution, "liberty, fraternity, and equality," instead. He was tempted to use the phrase, but thought that it was "too fanciful" and that its use was "thousands of years off in realization."

The Youth's Companion actively promoted the Pledge and loyalty to the government. At the time it was uncommon for a school to fly a flag outside its premises; that practice was almost exclusively associated with military bases. But during its campaign *The Youth's Companion* sold thousands of flags for use at public schools.

Baer says Francis Bellamy acknowledged that his Pledge put forth the ideas of cousin Edward. Francis originally toyed with the idea of making the Pledge more openly socialistic, but decided that if he did so it would never be accepted.

The reason that elected officials swear an oath to the Constitution is clear. And the reason that Francis Bellamy wrote his pledge is also clear. Bellamy's goal was not to inculcate the values of Jefferson and Adams. Instead, his desire was to promote the socialist utopianism of his cousin Edward.

The U.S. Constitution is anathema to socialists of all types. It is a roadblock to be circumvented. That Edward Bellamy understood this can be seen in his comparison of the written U.S. Constitution and the unwritten English one: "England's Constitution readily admits of constant though gradual modification. Our American Constitution does not readily admit of such change. England can thus move into Socialism almost imperceptibly. Our Constitution being largely individualistic must be changed to admit of Socialism, and each change necessitates a political crisis" (quoted in Rose L. Martin, *Fabian Freeway*, p. 136).

The British Fabian socialist Ramsay MacDonald came to the same conclusion after a visit to the United States. In a speech printed in the February 1898 *Fabian News* he said: "The great bar to progress [in the United States] is the written constitutions, Federal and State."

When an oath for schoolchildren was being contemplated the socialists knew exactly what they were doing. □

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Plain Vanilla Liberty

by Karen Selick

The Ontario Court of Appeal made headlines, and rightly so, when it decided recently that epileptic Terry Parker has a constitutional right to use marijuana as medicine. While this was a big step forward for Canada, it was unfortunately undermined by the simultaneous taking of two steps back.

What most news reports barely mentioned was that on the same day it released its decision in *Regina* [the Queen] *v. Parker*, the court released another decision, called *Regina v. Clay*, with a dismayingly different outcome. The court held that the ban on pot violated the Charter guarantees of liberty and security of the person for Mr. Parker, a medical marijuana user, but not for Mr. Clay, a recreational user. Less than two months earlier, the B.C. Court of Appeal had reached a similar conclusion regarding recreational users in a case called *Regina v. Malmo-Levine*.

I have long been puzzled by the peculiar interpretation that Canadian courts have placed on the word "liberty" in section 7 of the Charter of Rights and Freedoms. Among other things, they have said that liberty does not extend "to an unconstrained right to transact business whenever one wishes."

They've said, "There is no Charter-protected right to freedom of contract."

And again: "the rights protected by s. 7 . . . do not include a right to engage in a particular type of professional activity."

Why the devil not? Here's precisely what section 7 of the Charter says: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The word "liberty" stands naked and unadorned. It's not embellished by qualifiers or exceptions. There's no footnote saying that only epileptics or cancer patients are entitled to it. It doesn't say we have liberty in our homes but not in our businesses. It doesn't say we have the liberty of making wise decisions but not foolish ones. It just says liberty—plain vanilla liberty. Why is that word so hard for our politicians and judges to understand?

Defendant Christopher Clay argued that the Charter right to liberty must surely include the right to intoxicate oneself with marijuana in the privacy of one's own home. Sounds pretty logical to me. However, this argument drove him smack into the brick wall of previous Supreme Court of Canada (SCC) judgments.

According to the SCC, "In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are *of fundamental personal importance*" (emphasis added).

Elsewhere the SCC has said, "The Charter does not protect against insignificant or 'trivial' limitations of rights."

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The conclusions drawn by the Ontario and British Columbia Courts of Appeal after considering these passages were that the non-medicinal use of marijuana is not a decision of fundamental importance, that the criminalization of pot for recreational purposes is an insignificant or trivial limitation on liberty, and that toking up is not the sort of thing the Charter guarantee of liberty was designed to protect.

Subjective Conclusions

These conclusions are all highly subjective and therefore quite debatable. Maybe they'll be overturned on some future appeal to the Supreme Court. However, I'm not optimistic. Not much can be expected from jurists whose mindset is that the constitution guarantees us liberty for those rare, momentous decisions in our lives, but not for the day-to-day small stuff.

Does this mean that if the state decides to prescribe what time we must rise in the morning, what color our clothing must be, how many times we must chew our food before we swallow, and how often we must clip our toenails, we're still living in a free country? How many trivial violations of liberty can they heap on us before we're forced to admit that this is stifling authoritarianism, not freedom?

Besides, what's the logic of having different rules for decisions of fundamental importance and decisions of trivial importance? If citizens are so stupid or irresponsible that we can't handle the little stuff without direction from the state, where will we suddenly acquire the wisdom and character to handle the big stuff? In fact, if we never get any practice exercising our liberty on minor issues, isn't it all the more likely that we'll screw up when something important comes along?

Both courts attempted to do a balancing act, weighing the harm to the recreational pot user of keeping marijuana illegal against the harm to "society" of legalizing it. But they omitted one item from the equation—the harm a society suffers when its members become so used to having the minutiae of their lives governed for them that they consider it right and normal.

We're already at that stage, judging by the judicial rhetoric I've quoted above.

Nevertheless, the Ontario Court of Appeal has handed the federal government a golden opportunity to turn things around. Thanks to Mr. Parker's epilepsy, the prohibition on possessing marijuana has been struck down entirely, starting this August. The government must now decide whether to re-enact legislation outlawing marijuana but exempting medicinal use, or do nothing and effectively legalize pot. Although I've never touched the stuff in my life and don't plan to even if they legalize it, I'm voting for option two. Every little bit of liberty helps. □

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Economics

The Efficient Amount of Pollution

When environmentalists argue that the costs of protecting the environment should be ignored, they quickly find themselves in a box. The only way to protect environmental quality in some ways (say, reducing water pollution) is by harming it in other ways (say, increasing air pollution). To say that we should protect the environment without considering the cost is the same as saying that we should protect the environment without considering the damage done to the environment. When environmentalists take a break from silly rhetoric and get serious about improving environmental quality, they have to compare the value of alternative environmental goals; for example, clean air versus clean water. Doing this requires recognizing that, first, decisions are made at the margin (a little more clean water at the cost of a little less clean air), and, second, the marginal value of everything eventually begins to fall as we get more of it. Without these two insights from economics, an environmentalist can never get beyond providing comic relief for those who think seriously about environmental problems, which, I want to emphasize, includes some environmentalists.[1] But accepting the insights of marginal analysis leads to logical conclusions that many environmentalists do not like.

Once we recognize that it's marginal values that are relevant to our choices, and that the marginal value of all goods declines as we use more of them, it follows that environmental values don't always trump other values. Sure, we value environmental quality. But we also value lots of other things such as warm homes in the winter; cool homes in the summer; life-saving drugs; stylish clothes; fast food; hot showers; large, roomy vehicles; jet travel; hair spray; disposable razors, diapers, and grocery bags; fast-acting detergent; contact lens solution; chemically treated lawns; and so on. The production and consumption of all these things damage the environment, but it makes sense to increase our consumption of them as long as their marginal value is greater than the marginal environmental cost. And this means consuming trinkets, gadgets, and conveniences to the point of *significantly* damaging the environment if environmentalists are right when claiming that maintaining environmental quality is a serious problem.

The Efficient Amount of Pollution

We can illustrate the tradeoff between environmental quality and other desirable goods with a diagram. Beginning with no pollution, the marginal value of polluting would be extremely high. Imagine not being able to discharge any bodily pollution for a few hours and think about how much satisfaction would be realized by polluting a little bit (a minute or two would be sufficient, since you discharge carbon dioxide, a greenhouse gas, with

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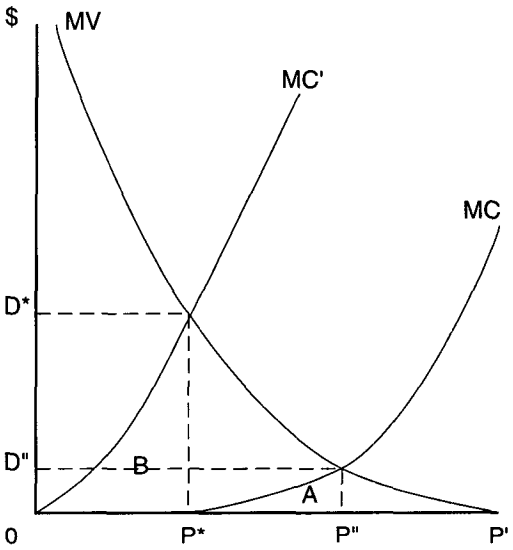
every breath). But as you increase your pollution by doing things that are less and less urgent, the marginal value of polluting declines. This decreasing marginal value of pollution is shown in the figure with the downward-sloping curve MV (the marginal value of pollution). At some point, P' in the figure, we have done all the polluting that creates value and the marginal value of pollution is zero.



Polluting is costly, of course, because it reduces environmental quality, at least beyond some point. Perhaps the assimilative capacity of the environment is so great that we can pollute a lot before there is any loss of environmental quality, in which case the marginal cost of pollution is zero over a wide range of pollution.[2] This situation is shown with the marginal cost of pollution curve, MC. When pollution first begins harming the environment, the marginal cost will be quite low, little more than aesthetically unpleasant. But as it increases, the marginal cost will also increase, with additional pollution beginning to harm plant and animal life. So the MC curve is upward sloping, as shown in the figure.

Given the values represented by curves MV and MC, what is the efficient amount of pollution (the amount that maximizes the total value derived from polluting)? When pollution is less than P", the marginal value realized from more pollution is greater than the marginal value sacrificed, or marginal cost—additional pollution adds more value than it destroys. But beyond P", the marginal value from more pollution is less than the marginal cost, and additional pollution destroys more value than it creates. The most net value is clearly realized when pollution is P". At P" the marginal environmental damage is given in the figure by D", and the total environmental damage is given by the area A (the area under MC from 0 to P").

Many environmentalists will argue that pollution is a more serious problem than suggested by the marginal cost curve MC, with the real marginal cost curve more like MC', showing greater cost at every pollution level. If true, then the efficient amount of pollution is reduced to P*, but the marginal environmental damage is given in the figure by D*, and the total environmental damage is given by the area B (the area under MC' from 0 to P*). The more vulnerable the environment to the damaging effects of human activity, the more environmental damage we are justified in doing.[3]

Regardless of whether the efficient amount of pollution is P' or P*, we will increase our pollution to P' (where its marginal value is zero) without some process for making us consider the cost that our polluting activities impose on others. Our pollution problems should make all of us, especially environmentalists, appreciate the advantages of private property and market exchange, which require us to pay prices for goods and services that reflect their marginal cost. If this were the case with polluting activities, there would be no pollution problems, since pollution would be expanded only up to the efficient level, where its marginal value equals its marginal cost.

Future columns will consider the efficiency of alternative approaches to protecting the environment. □

1. An increasing number of environmentalists appreciate how economic analysis is crucial to understanding and reducing environmental problems.

2. Some people argue that discharges of waste products into the environment aren't pollution until they impose costs on others. This definition has advantages, but for convenience I will refer to all waste discharges as pollution even though they may not create costs until they reach a certain level.

3. It is possible to construct MC' so that less total environmental damage is done at the efficient amount of pollution. I leave it to the reader to determine how the MC' has to be redrawn to get this result, and to explain why this redrawing is not very realistic.

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IDEAS ON LIBERTY
MAY 2001

May Day: Classlessness and Mr. Marx

by William H. Peterson

May Day is a signal to radical labor groups and parties the world over to take to the streets, make fiery speeches, parade, protest, demonstrate, and carry an increasingly common if bizarre placard, "Capitalism Kills." So the holiday, set by the Second Socialist Internationale in 1889, comes to hail socialism, resurrect Karl Marx, and make way for what it has long shown itself to be: the pursuit of an idle dream—a classless society.

To be sure, Eurocommunism from East Germany to the Soviet Union collapsed in 1989–1991 and with it its "temporary dictatorship of the proletariat." But as Nobel economist James Buchanan of George Mason University notes: "Socialism is dead; Leviathan lives."[1]

How so? It lives on in what British Labor Prime Minister Tony Blair tags the Third Way, in what the West accepts as the welfare state—a costly set of "social safety nets" in which state interventionism and undesignated, yet privileged state classes have become a way of life, as we'll see.

Recall the opening thought in the *Communist Manifesto* by Karl Marx and Friedrich Engels (1848): "The history of all hitherto existing society is the history of class struggles. Freeman and slave, patrician and plebeian, lord and serf, guild-master and journeyman, in a word, oppressor and oppressed. . . ." But as economist Ludwig von Mises and historian Ralph Raico noted, these opposed pairs become on examination, either wholly or in part, not economic but legal classifications, a vital distinction.[2]

Marx blamed the condition of an emerging working class on capitalism. But Marx would have been a lot sharper had he seen that that condition came not by capitalism but by its lack, that the state had already asserted its supremacy over the economy by what Adam Smith and others called mercantilism—what we now call state interventionism with its mess of attendant state-dependent classes.

Such interventionism is an assault on private property and a free society. The centrality of private property in the communist brief can be gauged from a line in the *Manifesto*: "The theory of the Communists can be summed up in the single sentence: Abolition of private property."

While that abolition was largely attained under Eurocommunism and Mao's China, a classless society somehow was not. The "temporary dictatorship of the proletariat" proved to be anything but temporary. The state did not wither away. It was at once solidified and oppressive. For Soviet recalcitrants, Siberia was both a threat and a reality. The latent Soviet class struggle—the state versus citizen—hung on for 74 years.

But what about the West and in particular the United States? Marx put forth the idea that the first step is to raise the working class "to

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the position of the ruling class, to win the battle of democracy."[3]

Win the battle of democracy? See here a slew of voter-bribing subsidies or privileges including Social Security for seniors, "public education" for youth, crop subsidies for farmers, subsidized college loans for students or targeted tax breaks for their parents, cheap federal flood insurance for farmers and landowners near the Mississippi and other waters prone to flood their banks, and Medicare, Medicaid, and employer tax-deductible health maintenance organizations (that is, third-party payers "freeing" consumers from health costs and thereby hiking medical prices).

Marx also urged the proletariat in each land to use its political supremacy to "wrest, by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State." He put forth ten ways to bring this state of affairs about:[4]

1. Abolition of property in land and application of all rents on land to public purposes. The federal government alone owns around one-third of the land mass of the United States. In an executive order last January, departing President Clinton banned road construction and most commercial logging from 58.5 million acres of U.S. forestland.

2. A heavy or progressive income tax. Goal accomplished, thanks to the Sixteenth Amendment to the Constitution, adopted in 1913.

3. Abolition of all right of inheritance. With the top graduated estate, or death, tax at 55 percent, apart from such state taxes and a federal exemption currently at $675,000 ($1,350,000 for husband and wife), inheritance is under less threat today than earlier—but is still under threat.

4. Confiscation of the property of all emigrants and rebels. Unaccomplished.

5. Centralization of credit in the hands of the state, by means of a national bank with state capital and an exclusive monopoly. Witness the Federal Reserve System with its enormous power over the money supply and its potential for mischief.

6. Centralization of the means of communication and transport in the hands of the state. The Federal Communications Commission has tight licensing control over the nation's radio–TV spectrum and cable systems. Regulation and taxation of the Internet are distinct threats.

7. Extension of factories and instruments of production owned by the state; the bringing into cultivation of waste lands and the improvement of the soil generally in accordance with a common plan. Planning seems involved in the Tennessee Valley Authority, Hoover Dam, Grand Coulee Authority, U.S. Postal Service, Rural Electrification Service, and different programs of the U.S. Department of Agriculture.

8. Establishment of industrial armies, especially for agriculture. This goal has been advanced with the minimum wage, affirmative action, equal pay, parental leave, maximum hours, ergonomic regulations, and compulsory union laws (save in 21 Taft-Hartley right-to-work states).

9. Combination of agriculture with manufacturing industries and gradual abolition of the distinction between town and country by a more "equitable" distribution of the population over the country. Rent control, zoning laws, and now anti-sprawl agitation and legislation have moved America toward this goal.

10. Free education for all children in public schools and abolition of child factory labor. The word "free" here is a bit fanciful; but "public schools" are government schools that render null and void individual choice, consent, contract, and competition. School propagandizing and erosion of individualism are further problems.

Law of Nature?

Marx believed that "with the inexorability of a law of nature" capitalism is doomed, that the system had become "a fetter on the forces of production." He was 100 percent wrong. Mises, in a 1920 essay, "Economic Calculation in the Socialist Commonwealth," held that a socialist economy was a contradiction in terms, that it was inherently unable to economize, especially in trying to optimize the allocation of capital. He wrote: "As soon as one gives up the conception of a freely estab-

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lished monetary price for goods of a higher order, rational production becomes completely impossible," with the central planners "groping in the dark" in a constant state of confusion and ignorance.[5]

May Day 2001. Is it a day to celebrate Karl Marx and his supposed historical inevitability of classless socialism with the wind-up slogan of the Communist Manifesto: "Working men of all countries, unite!"[6]?

Or is it a day to celebrate Adam Smith and his splendid concept of the "invisible hand," which harnesses innate self-interest to the public interest, per his famous line in *The Wealth of Nations*, "It is not from the benevolence of the butcher, the brewer or the baker that we expect our dinner, but from their regard to their own interest"?

Or is it a day to honor Ludwig von Mises for seeing consumer sovereignty in a fluid market society? As he said in *Human Action,* in the market, consumers make "poor people rich and rich people poor. . . . To be rich, in a pure market economy, is the outcome of success in filling best the demands of the consumers. A wealthy man can preserve his wealth only by continuing to serve the consumers in the most efficient manner."[7]

Or is May Day a time to toast U.S. Senator John C. Calhoun? Calhoun said, in an 1836 speech: "A power has risen up in the government greater than the people themselves, consisting of many and various and powerful interests." In his *Disquisition on Government* (posthumous, 1854), Calhoun drew attention to the state taxing power, which necessarily divides society into two great classes, the "taxpayers and tax-consumers. But the effect of this is to place them in antagonistic relations."[8]

"Capitalism Kills." Ha! I conclude that unhampered capitalism, or a market society, enhances and extends life, and is as close to a classless society as America and the West will see.

Happy May Day. □

1. James Buchanan, "Socialism Is Dead; Leviathan Lives," *Wall Street Journal*, editorial page, July 18, 1990.
2. Ralph Raico, "Classical Liberal Roots of the Marxist Doctrine of Classes," in Yuri Maltsev, ed., *Requiem for Marx* (Auburn, Ala.: Ludwig von Mises Institute, 1993), p. 190.
3. Karl Marx and Friedrich Engels, *The Communist Manifesto* (New York: Penguin Books, 1967), p. 104.
4. Ibid., pp. 104–105.
5. Quoted in Maltsev, p. 11.
6. Ibid., p. 121.
7. *Human Action: A Treatise on Economics* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 4th revised ed., 1996 [1949]), pp. 270–71.
8. Quoted by Ralph Raico in Maltsev, p. 218.

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CAPITAL LETTERS

Who's an Imperialist?

To the Editor:

Mark Skousen's "Imperial Science" (January 2001) dismissed the great impact of cooperative efforts between economists and researchers, scientists, and authors from other disciplines. In fact, such cooperative interdisciplinary work is now commonplace. Economists have at least as much to learn from, as they have to contribute to, other disciplines—a sentiment omitted in the target piece.

"Imperial," as relating to empire, domination, and subjugation, is a word that doesn't contribute to an understanding of the depth of shared knowledge emerging from the interplay among economic, evolutionary anthropology, biology, cognitive psychology, and neuroscience disciplines. These other disciplines use economic concepts developed independently of the economics profession. Examples include optimal foraging and cultural and biological notions of fitness, the latter also recognized by F. A. Hayek.

In evolutionary biology, the study of primate communities (in the wild and in captivity) provides parallels with the study of incentive structures and patterns of interaction in humans. The work of John Tooby and Leda Cosmides, evolutionary psychologists who are investigating aspects of cooperation in two-person exchanges and in small groups, suggests the innate human tendency to punish those who are regarded as cheaters on implicit social exchange contracts. We interpret these strategies as showing the spontaneous emergence of property-right enforcement (the endogenous policeman). Evolutionary anthropologists such as Kristin Hawks, Hillard Kaplin, and Kim Hill are studying extant hunter-gatherer societies and are documenting the extent of exchange based upon reciprocity when an obligation is not discharged with immediate payments in money, but deferred voluntarily to a later time when favors are returned.

Experimental economists refer to this as "personal exchange," the importance of which Doug North recognizes as "minimizing the need for formal rules and complaint procedures." Much of the work in other disciplines supports our understanding of specialization and the conditions under which it developed in humans tens of thousands of years before money, organized markets, or Adam Smith emerged.

In learning from and working with those in other disciplines, experimental economists have discovered behaviors demonstrating Hayek's insights into the realms of personal and impersonal market exchanges that "If we were to apply the unmodified, uncurbed, rules of . . . the small band or troop or, of say, our families to the . . . wider civilization, as our instincts and sentimental yearnings often make us wish to do, *we would destroy it.* Yet if we were always to apply the rules of the extended order to our more intimate groupings, *we would crush them.* So, we must learn to live in two sorts of world at once" (*The Fatal Conceit*, p. 18).

Dealing with impersonal exchange, many economists do not understand the growing field of experimental economics, and tend to believe that experiments simply verify what is assumed or believed about markets by economists. What is not well understood is that experimentation tests *means* (rule systems, processes, and information requirements), not abstracted *ends*, such as the generic value of competition. For experimentalists, free-market ideology is not sufficient to fashion, test, and subject to an ongoing discipline the property right details necessary to organize markets in the electronic age.

In many industries, markets have not been allowed, and in fact have long been considered to be "natural monopolies," tightly controlled by special interests and the state. How, for example, can the simple call for "market

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solutions" provide concretely specified alternatives to what the ten western governors are asking us to do with price controls in the electric power industry? A market that defines forms of efficient electric power decentralization is *not* going to emerge without a great deal of trial-and-error modification based on test bedding in both the laboratory and the economy. Practitioners and engineers within these industries contribute specialized knowledge that assists in the development of the experimental designs, and without their cooperation, new markets that work could not emerge.

The attitude portrayed in Mr. Skousen's article regarding the "invasion" the "overrunning the whole of social science," and the "domination of the other professions" by economics does not resonate with the philosophy of freedom, nor does it recognize the importance and extent of learning by economists from disciplines that have much to contribute to broadening economic understanding.

—Vernon L. Smith
Economic Science Laboratory
University of Arizona

Mark Skousen replies:

Vernon L. Smith is absolutely correct in citing examples of interdisciplinary cooperation between economists and other scientists, particularly biologists, anthropologists, and psychologists. No question it was a serious omission. I left out these examples for two reasons: (1) I plan to write a future column on behavioral economics, and did not have space to include it in this column, and (2) I still think economics is the "queen" of social sciences; its concepts and methods have expanded into other spheres more rapidly and more extensively than other disciplines—in finance, accounting, law, crime, and analyses of drug abuse, discrimination, marriage, education, religion, and government; the list goes on and on. My only regret is not mentioning experimental economics, dominated (if I may use that adjective) by Vernon Smith, as an example of my thesis. (I do mention experimental economics prominently in my new book, *The Making of Modern Economics*.)

I should also agree with Vernon Smith who implicitly suggests that the concepts of organic evolution have had a tremendous impact on the social sciences, including economics. It certainly governed the thinking of F.A. Hayek, as evidenced by such terms as "spontaneous order" and "unintended consequences." But let us not forget that both Charles Darwin and Alfred Russell Wallace—co-discoverers of the theory of organic evolution—perceived the idea of natural selection and the struggle for survival upon reading *An Essay on Population* by Thomas Robert Malthus, an economist!

I can understand Vernon Smith's distaste for the term "imperial science," with its implied anti-freedom, almost Marxist overtones. It probably doesn't engender empathy with other social scientists. If he can come up with a better term, I'm all for it. But something needs to replace the old derisive epithet "dismal science."

Are Free Education Markets Possible?

To the Editor:

In the February issue of *Ideas on Liberty*, Andrew Coulson makes the following claim: "[E]ducation systems driven by the unfettered choices of parents have systematically avoided [social conflicts over curriculum, goals, and methods] by allowing diverse communities to simultaneously satisfy both their varied personal needs and their shared social goals." Coulson implies that there have been (numerous?) examples of education systems in which all levels of government have stayed out of the business of education. What are these examples? Are they also examples of advanced industrial societies such as ours, characterized by the division of labor, a market economy, and some form of democratic government? I would be curious to know what these examples are, since I had thought that state-funded primary and secondary schooling has been coterminous with the rise of modern economies and political systems.

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The comparative public policy question of which level of government in fact has responsibility for education may be important for Coulson's review of Leon Botstein's piece, but that question does not get at the heart of current debates over the privatization of primary and secondary school education. One of the legitimate questions regarding public-school funding seems to me to be whether local control of schools funded primarily through property taxes exacerbates inequality of educational opportunity. Compared to what? you might ask. Compared to centralized state-level funding (as in Hawaii, as far as I know)? Compared to national systems (Japan?)? Compared to what would have been the case in the United States without decades of state-sponsored racial segregation? These are difficult empirical questions, compounded by the problem of even determining what "equal educational opportunity" would mean in a country with substantial inequality in a variety of aspects of well-being. That the question does not point in the direction of national funding is irrelevant for the broader issues at stake.

In general it's not clear to me where Coulson stands on two important real-world questions. First, what happens if a voucher plan is instituted, and for whatever reason the data no longer support the conclusion that private schools provide more equal educational opportunity than public schools? Normatively, Coulson would seem to have no problem with the result: after all, freedom trumps equality. Second, given that we're likely to get neither full privatization nor full public control over primary and secondary education, what kinds of reforms should we support?

—BRETT MARSTON
New Haven, Connecticut
(The writer is a graduate student in political science at Yale University.)

Andrew Coulson replies:

Though education, in its broadest sense, has been around since the dawn of humanity, mass formal education is more recent. It is difficult to find conclusive evidence for it prior to the fifth century BCE. In the 2,500 years since that time, a great variety of different school systems has been implemented by a great variety of different cultures. Both state-run "public" schooling and free-market "private" schooling can be traced back to classical Greece, with Sparta and Athens being prime examples, respectively, of each.

The Athenian free-market approach to education was mirrored in the early medieval Islamic empire of the seventh through the eleventh centuries CE, began to gain a brief and modest foothold in Germany just prior to the Reformation, and existed in modified form in England and the United States from the late 1700s up through the mid-1800s, when it was squeezed out of existence by competition from subsidized (and eventually "free") tax-funded state schooling.

In the United States, prior to the spread of modern state schooling in the 1850s, private venture schools coexisted with semi-public schools, which by today's standards were more similar to nonprofit private operations than to state schools. Finally, one of the most vibrant examples of a free education market is alive and thriving today in Japan's multibillion-dollar-a-year for-profit "juku" industry.

These examples, and the others on which I have based my conclusions about school governance, cover the full gamut of social, economic, cultural, technological, and political organization. That is precisely why those conclusions are so persuasive. Parent-driven free markets have not proven themselves superior to state-run monopolies in one or a few different times and places, but rather throughout history under a multitude of differing conditions. When one system consistently outshines another despite wide variations in setting, it argues that the superiority in question is more likely due to intrinsic qualities of the system itself rather than to repeated accidents of circumstance.

In moving on to the issue of educational equality, Mr. Marston wraps up his first point by referring to the "question of which level of government . . . has responsibility for education." This is understandable coming from a student of political science, but is grossly

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counterproductive for someone trying to determine the best way of organizing schools to serve families. To presume, a priori, that education must be under the control of some level of government connotes a failure to even consider the market alternative. Given the historical evidence I have summarized all too briefly above, you have eliminated the best solution before even beginning your investigation.

I, too, have studied the issue of educational equality, though from a somewhat different perspective. Having examined public-opinion data, and the concrete actions of parents in this and other countries, I have found that the public does not so much seek absolute equality of opportunity as it seeks universal access to good education. The public is committed to ensuring that every child has access to a good education, but does not seem committed to ensuring that all children have exactly the same opportunities. The real public outrage comes not from the fact that Bill Gates could afford to hire the world's leading minds to teach his children, but rather that millions of children, usually the most disadvantaged, are not even being taught to read by the public schools. There is little support for imposing "education caps" on the children of the wealthy, but there is a mountain of support for ensuring that a quality education is available to all.

Parents, for instance, will generally seek to do more for their own children than they will for the children of others. So while Japan may indeed have one of the world's most uniform public-school systems, it also has one of the worlds densest and most vigorous free education markets. That market exists for the sole purpose of allowing parents to get the best possible education for their particular children, tailored to their children's educational strengths and weaknesses.

Having based my entire study in this field on what the public actually wants, rather than on what philosophers or theorists think it should want, I have compared school systems to determine which have the greatest ability to provide universal access to a good education. My conclusion is presented in the final chapter of my book, *Market Education,* and is described in more detail in a forthcoming paper I have written for the Cato Institute. In short, that system is a free market in education supplemented with need-based financial assistance (provided through an integrated system of tax-credits and private scholarships). This will allow all families to participate in the educational marketplace.

If, however, you would like to pursue the idea of true equality rather than the public's goal of universal access to good education, then you should study the system of the ancient Spartans, which came nearer to equal education than any other system in history. Unlike the modern Japanese model, the ancient Spartans had no private education market to provide the diversity and flexibility needed to make up for the uniformity of the state system.

Mr. Marston will find Spartan schooling to have been an integral component of a pervasively totalitarian state, entirely at odds with liberal ideals. Without these totalitarian controls, equality could never be approached, given the already discussed propensity of parents to want the best for their own children, and the differing means parents are likely to have at their disposal.

Mr. Marston asks how I would react if "a voucher plan is instituted, and for whatever reason the data no longer supports the conclusion that private schools provide more equal educational opportunity than public schools?"

This question is somewhat misdirected. I am not advocating vouchers, and while I would like to see a reduction in the inequality caused by our existing state school system, my recommendations are geared toward the public's goal of ensuring universal access to good schools.

He then states his belief that I would prefer any system that maximizes individual parental freedom, no matter the harm to the disadvantaged. I am an empiricist who entered this field from a background in the hard sciences. My work has been aimed at finding the best way of meeting the public's avowed goals, not on promoting my or anyone else's philosophical preconceptions. I have taken all of the public's goals seriously, including the goal that all children should have access to a good education. The conclu-

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sions I have reached are based on the best and broadest array of evidence from around the world and across two-and-a-half millennia. Should new data come to light that indicate a different course, I would study and act on them accordingly.

Mr. Marston closes by saying, "given that we're likely to get neither full privatization nor full public control over primary and secondary education, what kinds of reforms should we support?"

I can only recommend that you support what you conclude to be right and true. Dramatic political and institutional changes do happen. Jefferson didn't settle for writing a Declaration of Codependence. □

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IDEAS ON LIBERTY
MAY 2001

It All Started with Adam

Adam Smith, that is. Having just completed writing a history of economics,[1] I have concluded that, despite the protestations of Murray Rothbard and other detractors, the eighteenth-century moral philosopher and celebrated author of *The Wealth of Nations* deserves to be named the founding father of modern economics.

The reason: Adam Smith is the first major figure to articulate in a profound way what has become known as the first fundamental theorem of welfare economics: that the invisible hand of competition automatically transforms self-interest into the common good. George Stigler rightly labels Smith's model of laissez-faire capitalism (Smith never used the phrase) the "crown jewel" of *The Wealth of Nations* and "the most important substantive proposition in all of economics." He states, "Smith had one overwhelmingly important triumph: he put into the center of economics the systematic analysis of the behavior of individuals pursuing their self-interests under conditions of competition."[2]

In short, Smith's thesis is that a "system of natural liberty," an economic system that allows individuals to pursue their own self-interest under conditions of competition and common law, would be a self-regulating and highly prosperous economy. Eliminating restrictions on prices, labor, and trade meant that universal prosperity could be maximized through lower prices, higher wages, and better products. Smith assured the reader that his model would result in "universal opulence which extends itself to the lowest ranks of the people."[3]

Indeed it has. Published in 1776, *The Wealth of Nations* was the intellectual shot heard around the world, a declaration of economic independence to go along with Thomas Jefferson's declaration of political independence. It was no accident that the industrial revolution and sharply higher economic growth began in earnest shortly after its publication. As Ludwig von Mises declares, "It paved the way for the unprecedented achievements of laissez-faire capitalism."[4]

For or Against Smith

The most amazing discovery I made in researching and writing over the past three years is that every major economic figure—whether Marx, Mises, Keynes, or Friedman—could be judged by his support of or opposition to Adam Smith's invisible-hand doctrine. Karl Marx, Thorstein Veblen, John Maynard Keynes, and even British disciples Thomas Robert Malthus and David Ricardo denigrated Adam Smith's classical model of capitalism, while Alfred Marshall, Irving Fisher, Ludwig von Mises, and Milton Friedman, among others, remodeled and improved on Smithian economics.

For example, Keynes is unsympathetic to Adam Smith's worldview. "It is not true that

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individuals possess a prescriptive 'natural liberty' in their economic activities. . . . Nor is it true that self-interest generally is enlightening. . . . Experience does not show that individuals, when they make up a social unit, are always less clear-sighted than when they act separately."[5] The basic thesis of Keynes's magnum opus, *The General Theory of Employment, Interest, and Money* (1936), is that laissez-faire capitalism is inherently unstable and requires heavy state intervention to survive. Keynesian disciple Paul Samuelson correctly understood the true meaning of Keynes: "With respect to the level of total purchasing power and employment, Keynes denies that there is an invisible hand channeling the self-centered action of each individual to the social optimum."[6] Thus, I conclude that Keynesian economics, rather than its savior, is an enemy of Adam Smith's system of natural liberty.

Karl Marx went even further. Instead of creating a system of natural liberty, Marx set out to destroy it. Modern-day Marxist John Roemer agrees. The "main difference" between Smith and Marx is: "Smith argues that the individual's pursuit of self-interest would lead to an outcome beneficial to all, whereas Marx argued that the pursuit of self-interest would lead to anarchy, crisis, and the dissolution of the private property-based system itself. . . . Smith spoke of the invisible hand guiding individual, self-interested agents to perform those actions that would be, despite their lack of concern for such an outcome, socially optimal; for Marxism the simile is the iron fist of competition, pulverizing the workers and making them worse off than they would be in another feasible system, namely, one based on the social or public ownership of property."[7]

Adam Smith as a Heroic Figure

By measuring economists against a single standard, Adam Smith's invisible-hand doctrine, I found a fresh way to unite the history of economic thought. Virtually all previous histories of economics, including Robert Heilbroner's popular work, *The Worldly Philosophers*, present the story of economics as one conflicting idea after another without resolution or a running thread of truth. This hodgepodge approach to history leaves the reader confused and unable to separate the wheat from the chaff.

My approach places Adam Smith and his system of natural liberty at the center of the discipline. Think of it as a story of high drama with a singular heroic figure. Adam Smith and his classical model face one battle after another against the mercantilists, socialists, and other enemies of liberty. Sometimes even his "dismal" disciples (Malthus, Ricardo, and Mill) wound him. Marx and the radical socialists attack him with a vengeance and leave him for dead, only to have him resuscitated by the leaders of the marginalist revolution (Menger, Jevons, and Walras) and raised up to become the inspiration of a whole new science.

But the "neo-classical" model of capitalism faced its greatest threat from the Keynesian revolution during the Great Depression and the postwar era. Fortunately, the story has a good ending. Through the untiring efforts of free-market advocates, especially Milton Friedman and F. A. Hayek, Adam Smith's model of capitalism is re-established and in the end triumphs. As Milton Friedman proclaims, "To judge from the climate of opinion, we have won the war of ideas. Everyone—left or right—talks about the virtues of markets, private property, competition, and limited government."[8]

Long live Adam Smith! □

1. *The Making of Modern Economics* (Armonk, N.Y.: M. E. Sharpe Publishers, 2001).
2. George Stigler, "The Successes and Failures of Professor Smith," *Journal of Political Economy*, December 1976, p. 1201.
3. Adam Smith, *The Wealth of Nations* (New York: Modern Library, 1965 [1776]), p. 11.
4. Ludwig von Mises, "Why Read Adam Smith Today," in *The Wealth of Nations* (Washington, D.C.: Regnery, 1998), p. xi.
5. John Maynard Keynes, "The End of Laissez-Faire," *Essays in Persuasion* (New York: Norton, 1963 [1931]), p. 312. Keynes's speech was given in 1926, a full decade before *The General Theory* came out.
6. Paul A. Samuelson, "Lord Keynes and the General Theory," *The New Economics*, ed. Seymour Harris (New York: Knopf, 1947), p. 151.
7. John E. Roemer, *Free to Lose* (Cambridge, Mass.: Harvard University Press, 1988), pp. 2–3. Note the title, imitative, albeit negatively, of Milton and Rose Friedman's popular *Free to Choose* (New York: Harcourt Brace Jovanovich, 1980).
8. Milton and Rose Friedman, *Two Lucky People* (Chicago: University of Chicago Press, 1998), p. 582.

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BOOKS

What Price Fame?

by Tyler Cowen

Harvard University Press • 2000 • 248 pages • $22.00

Reviewed by Donald J. Boudreaux

As it happens, I'm writing this review on the 20th anniversary of the murder of John Lennon. This is an event about which it is appropriate to ask: What price fame? Lennon's fame was precisely what lured Mark David Chapman to murder him. By murdering someone famous, the murderer himself achieves fame. Lennon's fame cost him his life. Chapman's fame was purchased at the price of his liberty. Those are high prices to pay even for something as attractive as fame.

In his latest book, Tyler Cowen—professor of economics at George Mason University—discusses the downside of fame. Cowen goes far beyond the usual bromides about fame's dangers. For example, he argues persuasively that people "seek to consume the fame of celebrities as a way of demonstrating power. Each time a famous person receives attention, he or she is the victim of a power play on the part of the attention-giver. . . . [F]ans and attention-givers feast upon the fame of others for their own selfish reasons."

This is a superb insight, built on Cowen's recognition that in commercial society even seemingly non-economic goods such as fame are, in fact, the products of exchange. Fame doesn't just happen: fans give it to the famous in exchange for something that fans value. But this market isn't perfect. While fame doesn't typically lead to consequences so tragic as murder, it often causes fame-seekers to sacrifice truth and integrity for success. Witness almost any successful politician.

Although he warns against the dangers of fame and fame-seeking, Cowen's principal purpose is not to bury fame but to applaud it. He celebrates modern fame and fame-seeking, showing that despite its imperfections, it largely promotes useful creations by fame-seekers. As Cowen observes, "[f]ans are consumers who pay, at least in part, with praise." And fans generally get what they want. Cowen explains how market forces distribute fans' praise to guide fame-seekers to produce what fans want.

But many of today's most famous people are ethically challenged. Doesn't that argue against Cowen's favorable case for the way fame is produced and distributed? No. In the most intriguing argument of the book, Cowen admits that the modern system of producing and distributing fame separates it from moral merit, but that this separation is much less troubling than most people suppose.

Cowen's explanation of the reasons why fame and merit are separated in commercial society, and why this separation should cause no anguish, is so rich and subtle that an adequate summary is impossible in a short review. But here are highlights of the argument.

"[F]ame is more likely to separate from merit when moral teachings are supplied in a decentralized way." Indeed so. One of the largely ignored benefits of modern society is the decentralization of moral instruction. Decentralization promotes competition among moral instructors. Not only do different religions compete against one another to attract adherents, religion itself competes with other sources of moral instruction, such as self-help gurus.

As in other markets, it's easy to find particular sources of moral instruction that seem (in the beholder's eye) to be misguided. But there's every reason to believe that competition in the moral-instruction business improves the overall quality of moral instruction. Fame, however, is usually bestowed on people for reasons quite apart from their moral merit. The fame of the likes of Dennis Rodman, Madonna, and Robert Downey Jr. clearly has nothing to do with their personal ethics. They are famous only because they are outstanding entertainers.

The concern is that the very fact that, say, Dennis Rodman is famous will cause people to emulate his behavior or, at least, to regard

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such behavior more favorably. Cowen's counterargument is that with all of the competitive sources of moral instruction available, Dennis Rodman and other famous people enjoy no comparative advantage at influencing people's morality.

Cowen discusses a related benefit of commercial society: it has tamed fame. "Commercial society, while taking relative recognition away from moral leaders, also has taken renown away from tyrants and violent rulers. . . . The association of fame with entertainers, for all its flaws, departs from earlier concepts of heroic brutality and martial virtue. Most of today's famous people have had to persuade consumers to offer their allegiance and their dollars."

Cowen's ingenious analysis of the causes and consequences of fame's separation from moral merit alone is worth the price of this wonderful book. □

Donald Boudreaux is president of FEE.

Free Speech and the Politics of Identity
by David A.J. Richards
Oxford University Press • 2000 • $65.00 • 296 pages

Reviewed by George W. Dent

It's no surprise that free speech is under siege today—those in power always try to suppress criticism. What is surprising is that the attackers now come from the traditional defenders of free speech, mainstream academics. Most colleges have "politically correct" speech codes that threaten serious penalties for speech that is "offensive" with respect to race, sex, or sexual orientation. How did this happen? Feminist, gay, and minority radicals claim that because of the historical abuse of their groups, speech offensive to them (including pornography) silences them and excludes them from participating in society and enjoying its benefits as full equals. This speech must be suppressed.

Although many oppose laws against "offensive" speech, David A.J. Richards, professor of law at New York University, is a welcome addition because he is a left-leaning academic and gay advocate. In *Free Speech and the Politics of Identity* he accepts the premises of feminist, gay, and minority radicals; and he is one of them, so his argument against speech restrictions cannot be dismissed as self-serving. Moreover, he bases his defense of free speech on a broad freedom of conscience that will appeal to advocates of liberty. Curiously, Richards also supports campaign-finance limits and laws both forbidding private discrimination against and granting legal preferences to his favored groups. Thus he offers something for everyone, but is unlikely to be entirely convincing to anyone.

Richards defends free speech on a principle of toleration stemming from the rights to "conscience" and "equal respect for persons." Suppression of "offensive" speech reinforces stereotypes and harms those offended because it "disempowers" them "in the exercise of reasonable discourse that best challenges" offending speech. Permitting offensive speech also allows response, which, because it is "independent of the state, gives personal voice a moral authority it could not otherwise have."

This is a claim that advocates of speech codes reject. People in power never think they gain by tolerating speech that offends them. Indeed, official condemnation of a viewpoint discredits it in most people's eyes. Champions of political correctness openly expect speech codes to stigmatize speech they dislike. Richards's claim also seems to clash with his support for group preferences, which stigmatize their supposed beneficiaries.

Richards also favors campaign-finance limits because they promote "equality," which he considers a valid First Amendment value. He castigates the Supreme Court for holding otherwise when striking down some campaign-finance laws in *Buckley v. Valeo*. The politically correct will immediately point out that the purpose of "offensive speech" codes is to promote equality and thus charge Richards with being inconsistent.

Opponents of campaign-finance limits should agree and then note that if equality trumps

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free speech, free speech may be crippled. Richards casually glides over line-drawing issues in campaign-finance laws, but these issues are not trivial. The editors of the *New York Times* speak loudly in the marketplace of ideas. Campaign-finance laws prevent candidates they disfavor from speaking just as loudly. Moreover, political incumbents, who already enjoy greater recognition than most challengers, manipulate campaign-finance laws to entrench themselves further. Thus congressmen invade the public treasury to give themselves the franking privilege while restricting challengers in using even private funds to compete. Even in theory campaign-finance laws cannot achieve equality of voice, and in practice their effect is often perverse.

The same objection applies to "offensive speech" codes. The politically correct claim that these codes protect the weak, but rules are imposed only by those with the power to impose rules. Richards concedes this point in passing but never really grapples with it, probably because it would explode his defense of campaign-finance laws. And although he opposes "offensive speech" laws, which as yet hardly exist, he says nothing against campus "offensive speech" codes, which are ubiquitous. Is this academic nimbyism—favoring free speech only if it's "not in my back yard"? Neither does Richards challenge laws that forbid private expressive organizations to define their own membership—as in the Boy Scouts' excluding avowed gays as scout leaders. And although he criticizes discrimination against minorities, women, and gays, he never questions the gross discrimination in academia against political conservatives, libertarians, and traditionally religious people.

Richards's book is essentially an article on free speech padded to book length by myriad repetitions and long digressions on race, gender, and homosexuality—with frequent footnote citations to his own prior work. Although he eschews the obscure jargon employed by many left intellectuals, his prose is turgid and graceless, bloated with innumerable reiterations of specialized phrases. In sum, *Free Speech and the Politics of Identity* offers a precious nugget—a strong, cogent critique of "offensive speech" laws—embedded in a toxic mound of antilibertarian thought. □

George Dent is Schott-van den Eynden Professor of Law at Case Western Reserve University School of Law in Cleveland, Ohio.

The Triumph of Liberty

by Jim Powell

The Free Press • 2000 • 574 pages • $35.00

Reviewed by John Hood

On some books you feast. On others you nibble. Jim Powell's *The Triumph of Liberty* is one of the latter. A fascinating collection of brief biographical sketches of those who have championed human freedom throughout history, Powell's work is a seemingly inexhaustible source of information, insight, and inspiration. To sit down and read it cover to cover would be not to give Powell his due. His stories deserve to be savored, reread, and retold. (Readers of this magazine may remember that a number of Powell's sketches first appeared in these pages.)

Powell begins with Cicero and ends with Martin Luther King Jr. This reflects the breadth of his vision, blending names traditionally associated with free-market economics and classical liberal thought—such as John Locke, John Stuart Mill, Ludwig von Mises, Milton Friedman, and Ayn Rand—with champions of religious, social, and cultural liberation as varied as Mary Wollstonecraft, Susan B. Anthony, Louis L'Amour, Mark Twain, and Robert Heinlein.

One of my favorite accounts is of the life of Desiderius Erasmus, prolific author and contemporary of Martin Luther in fifteenth- and sixteenth-century Europe. I had only a passing familiarity with Erasmus, and so was delighted to learn about his defense of free will and religious toleration in an era of persecution by both the Catholic Church and Luther's Protestant followers. Erasmus, we further learn, wrote a response to Machiavelli's *The Prince* urging European leaders to favor peace and freedom over power and plunder. "I am a lover of liberty," he wrote,

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and Powell supposes that he "must have been uneasy about his friend Thomas More's *Utopia*, which described an ideal society where 'everything's under state control.'"

Powell dutifully provides those just learning the tenets of the freedom philosophy an excellent introduction through the lives of major eighteenth-, nineteenth-, and twentieth-century economists, philosophers, and politicians. But then he throws some curve balls. He profiles William S. Gilbert, whose comic operas ridiculed the governing establishment of his day. *H.M.S. Pinafore, or the Lass That Loved a Sailor* apparently drove Tory prime minister Benjamin Disraeli up the wall, which alone justifies Gilbert's inclusion in *The Triumph of Liberty*. Another work created with Sir Arthur Sullivan, *The Mikado*, is a clever take on the dangers of meddlesome government and the hypocrisy it so often creates.

Another gem is Powell's profile of Victor Hugo, whose *Les Misérables* has itself been revived as a popular and powerful musical in recent years. I had forgotten that it was Hugo who famously declared that "nothing is so powerful as an idea whose time has come."

I am indebted to Powell for giving me a new appreciation of Thomas Babington Macaulay. Powell leads off his treatment of Macaulay by making the sweeping claim that the English essayist and historian "ranks among the most eloquent of all authors on liberty" and "in terms of the sheer quantity and range of eloquence, perhaps only Thomas Jefferson soared to such breathtaking heights." Macaulay was an abolitionist, advocate of religious freedom and equality for women, and critic of "profuse expenditures, heavy taxation, absurd commercial restrictions, corrupt tribunals, disastrous wars" and other government perfidy. He wrote that private property is "that great institution to which we owe all knowledge, all commerce, all industry, all civilization."

The Triumph of Liberty provides a unique perspective on such pivotal world events as the fall of the Roman Republic, the Reformation, the American Revolution, the Holocaust, and social movements for abolition, women's suffrage, and civil rights. A major theme is how much it can cost to stand up for basic human freedom. Twelve of the 65 men and women he profiles were imprisoned for their beliefs, and 15 were exiled from their home countries. Three were killed. Many of Powell's heroes were poor for much of their lives, sacrificing material comfort as they fought for their principles. Often they did not live to see the fruits of their labors.

In today's intellectual climate, the kind of history that Powell has written is decidedly out of fashion. His is a book about heroes whose actions altered the course of human development. It is a refutation of the notion that only impersonal social and economic forces can explain the evolution of societies. If, for example, John Lilburne had not spent much of his life in English prisons, protesting the injustices of the Star Chamber and championing the rights of the individual, English history from the seventeenth century to the present might have been far different.

I feel compelled to conclude by quoting one of the blurbs on the back of *The Triumph of Liberty*. I do so only because I can't imagine any better way to put it. "A generation of American children are being taught that Malcolm X, Ralph Nader, Gloria Steinem, and William Kunstler are heroes," author P. J. O'Rourke wrote. "Please read *The Triumph of Liberty* to your kids. Or go to their school and hit a teacher over the head with it." □

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Government Works:
Why Americans Need the Feds
by Milton J. Esman
Cornell University Press • 2000 • 196 pages • $26.00

Reviewed by George C. Leef

Let's imagine that we have been sitting through a trial. The prosecution has presented some powerful evidence against the defendant. The defense attorney rises and says, "All we have heard is a lot of mean-spirited bashing of my client. Why, not only

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does he not belong on trial, but he deserves praise for his wonderful works and humanitarian spirit! Just take my word for it, ladies and gentlemen. My client is so good, he ought to be up for sainthood!" The defense then rests. I ask you what you think of that defense. You reply that it's so preposterously weak that it might as well not have been uttered.

In *Government Works*, Milton Esman, professor of international studies at Cornell University and self-proclaimed "progressive" has played the role of the defense attorney in my little tableau. Esman is despondent over the failure of progressivism to continue its march toward the bright future of equality, security, harmony, and social justice that seemed so attainable back in the early to mid-1960s. Since then, however, that radiant future has receded, mainly due to "rightist" activism. Poor Professor Esman. What's an aging progressive to do when he *just can't stand* the "unchallenged trashing of a central institution of American democracy" anymore. Write a book, of course.

But writing a book, like defending an accused person, can be hard work. A book that would prove that, as the title says, government works—or at least make a respectable effort at doing so—would be a tremendous undertaking. It would entail some heavy lifting in intellectual fields where Esman has no apparent competence, especially economics. Doing battle with all those horrid "right-wing" scholars would be a prodigious task, would get bogged down in details, and worst of all might wind up doing nothing to raise the morale of progressives. The solution is to do what our lazy attorney did: Declare that the whole case against progressivism is based on nastiness, assert that it is great and will solve our problems, and leave it at that.

And thus we get *Government Works*, a screechy little book that ignores the substance of free-market criticism of statist programs, but "defends" them by arguing that those who oppose the "progressive" agenda are only a bunch of mean, opportunistic Republicans and fat cats who have been bashing government to promote their own self-interest.

The bibliography is a good indication of the book's incredible imbalance. Under the heading "The Current Debate," Esman lists such pinnacles of scholarship as James Carville's *We're Right, They're Wrong*, but never mentions anything by, just to pick a few well-known names, Richard Epstein, Milton Friedman, or James Buchanan. The closest Esman comes to even acknowledging the existence of free-market scholarship is this sentence: "The late 1970s witnessed the maturing and the achievement of intellectual respectability for ideologically rightist journals and think tanks that had been initiated a generation before by a small band of wealthy enemies of activist government." That's it. Unfortunately, "intellectual respectability," isn't enough to cause the author to pay any attention to what those think tanks have to say. (Of course, many libertarian scholars are not funded through donations from those "wealthy enemies of activist government," but for Esman to say that would be to deprive himself of his guilt-by-association ploy.)

Here's an example. Esman repeats the leftist canard that the Depression was caused by the failure of capitalism, writing that "the Republican right has embraced economic laissez-faire and free market fundamentalism, rejecting decades of experience and scholarship regarding the limitations of the model, which two generations ago appeared to be seriously flawed by the Great Depression." Sorry, professor, but the Depression was a case of government blundering from start to finish, as many "intellectually respectable" economists and historians have shown.

Esman wants all kinds of new interventionist, redistributive programs to work where he claims markets fail, and he sees market failure almost everywhere. He insists on "single-payer" universal health service, oblivious to the evidence that such a scheme would produce much worse results than would a true market (which we haven't had for decades) in health care. He wants federally provided child care, but makes no argument at all that the market for child-care services doesn't work or that there is any reason why women who want to hold jobs should be subsidized for that choice. And on and on.

Like the defense attorney who wants the

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jury to trust him on the goodness of his client, Esman merely asserts that we need more coercion in America and that it will always be put to splendid uses. It's laughable. □

George Leef is the book review editor of Ideas on Liberty.

Ready or Not: What Happens When We Treat Children As Small Adults

by Kay S. Hymowitz

Encounter Books • 2000 • 290 pages • $16.95 paperback

Reviewed by Jennifer Roback Morse

Libertarianism is sometimes summarized as the right to do any nonaggressive act. *Anything That's Peaceful* is the title of one of Leonard Read's finest books. We might suppose that the cause of a free society is well served by extending that freedom of choice to ever younger people over an ever wider scope of activities. Kay Hymowitz convincingly demonstrates that broadening children's freedom of action undermines the wider cause of a free society. Paradoxically, even the children themselves are not well served, and become less free, if their elders grant them too wide a range of freedom.

Ready or Not is both important and challenging for libertarians. It is important because the central premise of the book, contained in the subtitle of the earlier, hardback edition, "why treating children as small adults endangers their future—and ours," is true. The book will be challenging because Hymowitz's style of argumentation is distinct from the usual libertarian style. She will not immediately fit into the obvious categories of "friend or foe" of liberty. But on closer reading and reflection, it becomes clear that she is, by all means, an important and profound friend of liberty.

Not all child-rearing methods are consistent with the needs of a free society. Hymowitz makes a compelling, and to this reader, novel argument that early generations of Americans realized that their experiment in liberty required distinctive child-rearing methods. She calls this new method for a New World "republican childhood." The children of a free people needed to be trained for their liberty. They needed to be taught to think for themselves, to have a manly independence, and not to be servile and fawning toward authority figures.

But the republican childhood of old was by no means a precursor of the modern hippie love child, overindulged and permitted everything. Republican childhood required that children be taught to control their passions and impulses. On Hymowitz's telling, the childhood of yesteryear combined a strong measure of self-discipline with the cultivation of independence.

The villain that appeared on the stage of the early twentieth century was not the set-piece villain of either libertarianism or its enemies. Hymowitz's villain is neither capitalism nor statism, but rather the idea of naturalism. Naturalism holds that children are "naturally capable, fully conscious and intentional." Their authentic selves will emerge if only adults will leave them unfettered. Children should not be introduced to norms of behavior and collective knowledge bound up in customs of long usage. Rather than being initiated into culture, children should be protected from it.

Hymowitz accurately dubs this social program "anti-culturalism." Although there is a libertarian variant of this romanticism, it is usually most useful to the political left. Hymowitz's analysis, although not explicitly a work of political philosophy, gives a hint as to why this might be so.

As a matter of plainly observable fact, children are not noble savages, whose most pressing need is to be left alone. Children need guidance and instruction if they are ever to be able to use the freedom that our society ultimately wants them to have as adults. Ironically, she reports that the children most "left alone" by adults prove to be particularly vulnerable to peer pressure and ultimately to the influence of impersonal forces such as advertising. This is why romantic naturalism is so appealing to the left. It undermines all existing authority, including cultural authority. The left can then move its own ideology into the void.

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This argument will be challenging for many libertarians because it is social criticism more than the economic or political criticism with which we are most familiar. It is not primarily a libertarian critique of government, with an argument of what the state has done wrong and how more minimalist policies would help. (But libertarians will find themselves cheering her attack on the loony, anti-culturalist school curriculum.) Nor is it primarily a statist critique of the market, with an argument about how enlightened government regulation could easily correct the situation. (But readers on the left will be gratified by her criticism of advertising.) This is primarily a work of social criticism, which is to say a critique of the more amorphous thing known as culture, and of those ubiquitous actors, ourselves. She is challenging every reader of every ideological persuasion to be on the lookout for these poisonous ideas.

When she attacks the vacuous instruction that masquerades as education in many schools, the target in the cross hairs is neither the teachers' union nor compulsory schooling laws. When she criticizes advertising, her object is not to devise regulations. Her object is to persuade us to turn off the TV and to keep a close eye on the school curriculum. Most any reader can find some part of himself in this book and therefore will find some small but genuine contribution he can make by taking its argument to heart.

The libertarian political philosophy works because it is well-grounded in truths about human nature. People are self-interested. They will work harder for something they own than for some amorphous common good. Their self-interest can be channeled towards cooperative ends. Those facts lead us to favor individual freedom over collective action or coercive centralization.

But these are not the only truths about human nature. It is equally true that we are born as helpless babies and not as fully grown economic men. Childhood is not merely a socially constructed artifact that we can deconstruct and reconstruct at will. This core idea of Hymowitz's book is certainly true. Children are not prepared for the autonomy appropriate to adults and will not automatically become prepared for it. Treating small children as if they were adults really does threaten their future, and ours. □

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Grover Cleveland: A Study in Character
by Alyn Brodsky
St. Martin's Press • 2000 • 496 pages • $35.00

Reviewed by Lawrence W. Reed

Having just endured vacuousness on a grand scale in the last presidential campaign and eight years of verbal subterfuge and prevarication under Bill Clinton, Americans are in need of an inspiration from their political past. They have it in the person of our principled 22nd and 24th president, Grover Cleveland—brought to life in the past year by not one but two laudatory biographies. *An Honest President: The Life and Presidencies of Grover Cleveland* by H. Paul Jeffers is an entertaining but barebones account of America's most underrated chief executive. It appeared in early 2000 but was soon eclipsed by Alyn Brodsky's superbly written and more thoroughly researched *Grover Cleveland: A Study in Character*. In admiration for their subject's honesty and candor, both authors cite this characteristic Cleveland remark: "What is the use of being elected or reelected unless you stand for something?"

Both books, appearing as they do in a climate of cynicism about the political process and the caliber of today's politicians, will surely rekindle an interest in Cleveland. In comparison to him, most recent aspirants for and occupants of America's highest public office look like rogues and pipsqueaks.

Historians rate Cleveland among the better half of presidents, and some have even labeled him "near-great." But he didn't fight a war and he didn't shmooze and slither his way to political power; nor did he exercise power as if he loved it for its own sake. He did the public's business honestly and frugally and otherwise left people alone. Historians who are deluded into thinking that "greatness" means expanding the frontiers of the coercive

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state and throwing America's weight around the world don't have much time for titans of limited government like Grover Cleveland.

In many ways, Cleveland was a political freak even for his day. As Brodsky capably explains with numerous vivid examples, he time and again refused to do the politically expedient. The first Democrat in the White House since James Buchanan, he appointed the best people he could find, often earning the wrath of friends and party bigwigs because they didn't get the nod. As Brodsky puts it, "Here, indeed, was that rarest of political animals: one who believed his ultimate allegiance was to the nation, not to the party."

Cleveland never lusted for public office but was one of the few presidents who was carried forth on the shoulders of those who admired him for his character. The *New York Times*, which today endorses charlatans, panderers, and statists routinely, endorsed Cleveland for president in 1884 by declaring three reasons for voting for him: "1. He is an honest man. 2. He is an honest man. 3. He is an honest man." Just three years before, he was a little-known lawyer in Buffalo with a previous stint as a county sheriff under his belt. Between 1881 and his elevation to the presidency, he would be elected mayor of Buffalo and governor of New York—vetoing spendthrift bills and battling corruption.

Cleveland was a big man—tipping the scales at 300 pounds at one point—but he stood firmly for small government. He vetoed more bills than all the previous 21 presidents combined. He did his homework when he tossed out hundreds of fraudulent pension claims tied, however tenuously, to the Civil War. He fought to lower tariffs even though his closest advisers warned him the issue was a political hot potato. He nixed many attempts to raid the treasury for the benefit of special interests, including "charitable" causes like helping drought-stricken farmers in Texas. He even opposed using public money for monuments to honor veterans and other heroes, arguing that such things belong in the realm of private initiative.

In foreign policy, he didn't see it as the duty of the American government to plant its flag smack in the middle of the affairs of other nations. If it wasn't clearly spelled out in the Constitution, Cleveland said forget it.

Cleveland had no formal training in economics, and neither does biographer Brodsky, but both in their own ways exhibit the traits of good economists—Cleveland for the way he handled complex issues like the monetary crises of the time, and Brodsky for his understanding that Grover did the right thing. In defense of sound money and the gold standard, the President navigated dangerous waters with perspicacity; in interpreting those actions, the biographer rises to Cleveland's defense with careful analyses. Brodsky even defends Cleveland's arrangement with financier J.P. Morgan to shore up the government's gold reserve—a necessary action usually scorned by historians of greater notoriety but of lesser economic intellect.

What I admire most about Cleveland, and what comes through clearly in Brodsky's work, is that his "character rather than his mind" informed his presidencies. He wasn't a Princeton brain like Wilson or a Rhodes Scholar like Clinton, but he drew strength from a reservoir of principled character with which neither Wilson nor Clinton will ever be associated. He favored freedom and limited government because he saw honesty as their antecedents.

After reading Alyn Brodsky's biography, one wonders if a Grover Cleveland could ever be elected again or, perhaps more important, if Americans will ever again muster the moral courage to shove the pipsqueaks aside and vote for such a man. □

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IDEAS ON LIBERTY
MAY 2001

It Depends on What the Meaning of "Advice" Is

After the November 2000 election then-President Clinton worked overtime to issue executive orders imposing regulations by presidential fiat that he was unable to persuade Congress to adopt. From the creation of national monuments that place millions of acres of land out of bounds to everyone except those approved by the environmentalist establishment, to workplace safety regulations designed to harass employers out of favor with the AFL-CIO and to give OSHA bureaucrats useless work to do, Clinton imposed extremist, costly interventionist policies supported by a wide variety of Democratic special-interest groups. President Bush has undertaken a review of these last-minute political payoffs to see how many of them he can reverse by executive order.

Here is a less well-known, last-minute Clinton policy imposition that President Bush ought to reverse. On January 10, only ten days before Bush's inauguration, the Office of Labor-Management Standards in the Department of Labor, at Clinton's behest, issued a new interpretation of Section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959. The Act was adopted by Congress principally to address widespread corruption and racketeering infesting labor unions during the 1950s that was uncovered by the McClellan Anti-Racketeering Committee. Title I of LMRDA is a bill of rights for rank-and-file workers to protect them against rapacious union bosses. It has been only moderately successful in that regard.

Title II imposes various reporting requirements on people and organizations involved in labor relations. Section 202(a) requires unions to file annual reports on their expenditures with the secretary of labor. Section 203(a) imposes similar reporting requirements on employers regarding their expenditures related to labor relations. Section 203(b) imposes reporting requirements on "Every person who pursuant to any agreement or arrangement with an employer undertakes *activities* [emphasis added] where an object thereof is directly or indirectly to persuade employees" regarding whether or not to unionize. Section 203(c) says, "Nothing in this section shall be construed to require an employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give *advice* [emphasis added] to such employer." The "other person" refers to consultants hired by employers to help them avoid unionization of their employees.

Since 1962 the Department of Labor had interpreted Sections 203(b) and (c) to mean that if a union-avoidance consultant prepares written or other material that he then presents directly to employees, this constitutes 203(b) "activities" and triggers the reporting requirements. However, if the consultant's materials are presented to employers, who then, on the advice of the consultants, present them to employees, this constitutes section 203(c)

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"advice" and does not trigger the reporting requirements.

The reporting requirements are onerous. If union-avoidance consultants are forced to comply with them they will do less consulting and/or raise the prices they charge significantly. This means that employers will get less professional help with their union-avoidance efforts, making the unions' organization efforts much easier. Clinton's Department of Labor unilaterally changed the meaning of "advice" in Section 203(c) to exclude the preparation of union-avoidance materials for employers to use. Only "recommendations regarding a decision or course of conduct" will henceforth be regarded as advice. Preparation, or help in preparation, of union-avoidance materials such as speeches, notices, and videos will henceforth be called Section 203(b) "activities."

Sweeney's Bidding

Congress has hitherto never quarreled with the 1962 interpretation of "advice." Clinton never even asked Congress to consider the issue. In the waning days of his presidency he without warning or notification instructed his Department of Labor to do the bidding of John Sweeney, president of the AFL-CIO. Sweeney's problem is that fewer and fewer workers are voting to unionize. In 2000, union membership in private-sector employment fell to 9 percent, lower than it was before the Wagner Act became law in 1935. Employers' informed union-avoidance strategies are part of the reason why unions seem less and less attractive to workers. The biggest reason is that workers are coming to realize that in the face of global competition, union-impaired firms do not provide as much job security as firms that are union-free. Sweeney wants to muzzle employers during union-organizing campaigns. He wants free speech for himself and his organizers but not for employers or anyone else who tells workers of the advantages of remaining union-free.

Actually, he already has a court-imposed speech advantage over employers in organizing campaigns. Section 8(c) of the National Labor Relations Act (NLRA) ostensibly protects the free-speech rights of union organizers and employers alike. It says, "The expressing of any views, argument, or opinion , or the dissemination thereof . . . shall not be evidence of an unfair labor practice under any of the provisions of this Act, *if such expression contains no threat of reprisal or force or promise of benefit*" [emphasis added]. In two cases the Supreme Court interpreted this section in a way that favors unions over employers. Because of its 1964 *Exchange Parts Co.* decision, union organizers can promise workers all sorts of benefits if they unionize, but employers are forbidden to promise benefits for remaining union-free. Because of its 1969 *Gissel Packing Co.* decision, unions can regale workers with all the bad things they imagine will happen (such as employer exploitation) if workers vote against unionization, but employers are strictly limited in what they can claim about the bad things that might happen (such as a plant closure) if workers vote to unionize.

Suppose in congressional and presidential elections that Republicans were permitted to promise all sorts of benefits to voters for voting Republican, but Democrats were forbidden to do the same for voting Democratic. Suppose Republicans were permitted to predict dire results of Democratic victories, but Democrats were severely restricted in predicting the same for Republican victories. I bet John Sweeney would protest. Yet he thinks similar rules in union representation elections are not only fair but essential for workplace democracy.

President Bush cannot, without the concurrence of Congress, overturn Supreme Court interpretations of statutory law. But he can and should overturn Clinton's last in a long list of presidential favors granted to John Sweeney. That's my advice. □

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"*Of all the animals with which this globe is peopled, there is none towards whom nature seems, at first sight, to have exercis'd more cruelty than towards man, in the numberless wants and necessities, with which she has loaded him, and in the slender means, which she affords to the relieving these necessities.*"

—DAVID HUME (1711-1776), A *Treatise of Human Nature*

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